

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STEVE ADAMS,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
	)	2:06-cv-00707-ID-CSC
)	
MERCHANTS FOODSERVICE, et al.,)	
)	
Defendants.)	

**DEFENDANT MERCHANTS FOODSERVICE'S
EVIDENTIARY SUBMISSION IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Defendant Merchants Foodservice ("Merchants" or "defendant") submits the following evidentiary submission in support of its Motion for Summary Judgment:

- Exhibit 1 - Plaintiff's deposition, with exhibits;
- Exhibit 2 - Declaration of Andy Mercier, with exhibits;
- Exhibit 3 - Declaration of Scott Casey; and
- Exhibit 4 - Declaration of Hal Henson.¹

¹ Defendant certifies that the original declarations for Andy Mercier, Scott Casey, and Hal Henson are in its possession.

Respectfully Submitted,

/s/ J. Tobias Dykes

J. Tobias Dykes (Bar No.: DYK002)

Direct Dial No.: (205) 226-5469

CONSTANGY, BROOKS & SMITH, LLC

Suite 900, One Federal Place

1819 Fifth Avenue North

Birmingham, AL 35203

Facsimile: (205) 323-7674

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Derrick Blythe, Esq.
126 Marshall Street
Alexander City, AL 35010

/s/ J. Tobias Dykes

J. Tobias Dykes

EXHIBIT

1

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 NORTHERN DIVISION</p> <p>4</p> <p>5 CIVIL ACTION NO.: 2:06-CV-00707-ID-CSC</p> <p>6</p> <p>7 STEVE ADAMS,</p> <p>8 Plaintiff,</p> <p>9</p> <p>10 vs.</p> <p>11</p> <p>12 MERCHANTS FOODSERVICE; et al.,</p> <p>13 Defendants.</p> <p>14</p> <p>15</p> <p>16 DEPOSITION TESTIMONY OF:</p> <p>17 STEVE ADAMS</p> <p>18</p> <p>19</p> <p>20 STIPULATIONS</p> <p>21 IT IS STIPULATED AND</p> <p>22 AGREED by and between the parties</p> <p>23 through their respective counsel that</p>	<p style="text-align: right;">Page 3</p> <p>1 objections and assign grounds at the</p> <p>2 time of trial or at the time said</p> <p>3 deposition is offered in evidence, or</p> <p>4 prior thereto.</p> <p>5 In accordance with Rule 5(d)</p> <p>6 of the Alabama Rules of Civil Procedure,</p> <p>7 as amended, effective May 15, 1998, I,</p> <p>8 Mandy Bryant, am hereby delivering to J.</p> <p>9 Tobias Dykes, Esq., the original</p> <p>10 transcript of the oral testimony taken</p> <p>11 the 4th day of April, 2007, along with</p> <p>12 exhibits.</p> <p>13 Please be advised that this is</p> <p>14 the same and not retained by the Court</p> <p>15 Reporter, nor filed with the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p style="text-align: right;">Page 2</p> <p>1 the deposition of STEVE ADAMS</p> <p>2 may be taken before Mandy Bryant, a</p> <p>3 Court Reporter and Notary Public for the</p> <p>4 State at Large, at the offices of</p> <p>5 Constangy, Brooks & Smith, L.L.C., One</p> <p>6 Federal Place, Suite 900, 1819 Fifth</p> <p>7 Avenue North, Birmingham, Alabama 35203,</p> <p>8 on the 4th day of April, 2007,</p> <p>9 commencing at approximately 10:20 a.m.</p> <p>10 IT IS FURTHER STIPULATED</p> <p>11 AND AGREED that the signature to and the</p> <p>12 reading of the deposition by the witness</p> <p>13 is waived, the deposition to have the</p> <p>14 same force and effect as if full</p> <p>15 compliance had been had with all laws</p> <p>16 and rules of Court relating to the</p> <p>17 taking of the depositions.</p> <p>18 IT IS FURTHER STIPULATED</p> <p>19 AND AGREED that it shall not be</p> <p>20 necessary for any objections to be made</p> <p>21 by counsel to any questions except as to</p> <p>22 form or leading questions and that</p> <p>23 counsel for the parties may make</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2</p> <p>3 EXAMINATION BY: PAGE NO.</p> <p>4 Mr. Dykes 7</p> <p>5 Mr. Blythe 210</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 FOR THE DEFENDANTS:</p> <p>11 1 - Notice of Deposition 61</p> <p>12 2 - Document 64</p> <p>13 3 - Social Security Statement 65</p> <p>14 4 - Earnings Statement 66</p> <p>15 5 - Photocopy of W-2s 67</p> <p>16 6 - Application for</p> <p>17 Employment 108</p> <p>18 7 - Correspondence 109</p> <p>19 8 - Resignation Letter and</p> <p>20 Exit Interview 113</p> <p>21 9 - Benefits Document 117</p> <p>22 10 - Incentive Program 121</p> <p>23 11 - Employee Check History 123</p>

1 (Pages 1 to 4)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 5</p> <p>1 EXHIBITS (continued)</p> <p>2</p> <p>3 12 - Photocopy of Paychecks 127</p> <p>4 13 - Acknowledgment of Employment</p> <p>5 Status 128</p> <p>6 14 - Acknowledgment of Receipt</p> <p>7 of Handbook 130</p> <p>8 15 - Employee Handbook 130</p> <p>9 16 - Acknowledgment of Receipt</p> <p>10 of Handbook 131</p> <p>11 17 - Employee Handbook 132</p> <p>12 18 - E-Mail 168</p> <p>13 19 - Employee Turnover Analysis</p> <p>14 Report 174</p> <p>15 20 - Letter of Resignation 181</p> <p>16 21 - Complaint 182</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 7</p> <p>1 I, Mandy Bryant, a Court</p> <p>2 Reporter and Notary Public, State of</p> <p>3 Alabama at Large, acting as</p> <p>4 Commissioner, certify that on this date,</p> <p>5 pursuant to the Alabama Rules of Civil</p> <p>6 Procedure, and the foregoing stipulation</p> <p>7 of counsel, there came before me at the</p> <p>8 offices of Constangy, Brooks & Smith,</p> <p>9 L.L.C., One Federal Place, Suite 900,</p> <p>10 1819 Fifth Avenue North, Birmingham,</p> <p>11 Alabama 35203, commencing at</p> <p>12 approximately 10:20 a.m., on the 4th day</p> <p>13 of April, 2007, STEVE ADAMS, witness in</p> <p>14 the above cause, for oral examination,</p> <p>15 whereupon the following proceedings were</p> <p>16 had:</p> <p>17</p> <p>18 STEVE ADAMS,</p> <p>19 being first duly sworn, was examined</p> <p>20 and testified as follows:</p> <p>21</p> <p>22 EXAMINATION BY MR. DYKES:</p> <p>23 Q. Mr. Adams, we just introduced</p>
<p style="text-align: right;">Page 6</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 PRESENT FOR THE PLAINTIFF:</p> <p>4 Derrick Blythe, Esq.</p> <p>5 ATTORNEY AT LAW</p> <p>6 126 Marshall Street</p> <p>7 Alexander City, Alabama 35010</p> <p>8</p> <p>9</p> <p>10 PRESENT FOR THE DEFENDANT MERCHANTS</p> <p>11 FOODSERVICE:</p> <p>12 J. Tobias Dykes, Esq.</p> <p>13 CONSTANGY, BROOKS & SMITH, L.L.C.</p> <p>14 One Federal Place, Suite 900</p> <p>15 1819 Fifth Avenue North</p> <p>16 Birmingham, Alabama 35203</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 Mr. Andy Mercier</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 8</p> <p>1 ourselves a minute ago. I'm Toby Dykes.</p> <p>2 For the record, can you just state your</p> <p>3 name?</p> <p>4 A. Full name is Charles Steven</p> <p>5 Adams.</p> <p>6 Q. Have you ever gone by any other</p> <p>7 names?</p> <p>8 A. Most people call me Steve. I</p> <p>9 mean, that's -- you know, any legal</p> <p>10 stuff as far as buying a home or a car,</p> <p>11 I do Charles S. or Charles Steven. But</p> <p>12 just Steve Adams is what I normally go</p> <p>13 by.</p> <p>14 Q. But no other legal names or</p> <p>15 anything?</p> <p>16 A. No.</p> <p>17 Q. No aliases?</p> <p>18 A. Huh-uh (shaking head</p> <p>19 negatively).</p> <p>20 Q. I represent Merchants</p> <p>21 Foodservice in the claim that you have</p> <p>22 filed against them that we're here about</p> <p>23 today, and I'm going to be asking you</p>

2 (Pages 5 to 8)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 9</p> <p>1 some questions about your claim. 2 A. Uh-huh. 3 Q. Do you understand that you've 4 just been placed under oath? 5 A. I do. 6 Q. Do you understand that this 7 deposition has the same force and effect 8 as it would — as your testimony would 9 if we were sitting in court? 10 A. I do. 11 Q. Now, I'm going to ask you a good 12 number of questions today. I don't 13 always ask the best questions. If you 14 don't understand a question, will you 15 tell me? 16 A. Uh-huh. 17 Q. One thing, just to help her job, 18 and I know you say uh-huh there, if 19 you'll answer a yes or no. 20 A. Okay. 21 Q. It's hard for her to type that 22 out. 23 A. Yes. All right.</p>	<p style="text-align: right;">Page 11</p> <p>1 18 — 18 and a half years. I don't 2 remember when we actually bought the 3 house or moved there, but it was before 4 my son was born, shortly there before. 5 Q. Who lives in that house with 6 you? 7 A. My wife, son, and daughter. 8 Q. What is your wife's name? 9 A. Laura. 10 Q. And your son's name is Z ? 11 A. Z And H is my daughter. 12 Q. And Z is 17? 13 A. Uh-huh. 14 Q. How old is -- 15 A. Yes. 16 Q. How old is H ? 17 A. She's 14. 18 Q. Are those your only children? 19 A. Yes. 20 Q. I take it neither of them are 21 married? 22 A. No. 23 Q. Where does Laura work?</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Have you ever given a deposition 2 before? 3 A. No, I haven't. 4 Q. Have you taken any medications 5 or had any beverages or anything that 6 would prevent you from testifying 7 truthfully today? 8 A. No. 9 Q. What's your Social Security 10 number? 11 A. 1240. 12 Q. Your date of birth? 13 A. /58. 14 Q. What's your driver's license 15 number? 16 A. 17 Q. Where do you live? 18 A. Address? 19 Q. Yes. 20 A. Alexander 21 City, Alabama. 22 Q. How long have you lived there? 23 A. Z is 17, so I'm going to say</p>	<p style="text-align: right;">Page 12</p> <p>1 A. She works at Russell Medical 2 Center. 3 Q. How long has she worked there? 4 A. This is just a guess, but I 5 would say 14 months. She had her 6 anniversary there not long ago, so 7 I'm — 14 months. 8 Q. What does she do at Russell 9 Medical Center? 10 A. She is the executive assistant 11 to the CEO of the hospital. 12 Q. Is Russell Medical Center in 13 Alex City? 14 A. Yes. 15 Q. Where did she work prior to 16 that? 17 A. She worked for the Lake Martin 18 Regional Economic Development Alliance, 19 I believe is the correct name for it. 20 Q. What did she do there? 21 A. She was an administrative 22 assistant to the director. 23 Q. Did she ever work at SYSCO?</p>

3 (Pages 9 to 12)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 13

1 A. She did.
 2 **Q. When did she work for SYSCO?**
 3 A. From 1999 until she started at
 4 the Economic Alliance, which I don't
 5 remember the date on that, but --
 6 **Q. What was her job at SYSCO?**
 7 A. She was the executive assistant
 8 to the president of SYSCO Central
 9 Alabama.
 10 **Q. Were you working at SYSCO when**
 11 **she started there?**
 12 A. I was.
 13 **Q. Were you able to help her get**
 14 **the job, or is that something she did on**
 15 **her own?**
 16 A. I told our HR director that she
 17 would -- that Laura was looking for a
 18 job, so to speak, and she asked me just
 19 to tell Laura to send her resume. I
 20 guess that was my involvement in it.
 21 The rest of it, she did on her own as
 22 far as the interview and stuff.
 23 **Q. How long did she continue**

Page 14

1 working there at SYSCO after you left?
 2 A. Like I said, I don't remember
 3 the date she started at the Economic
 4 Alliance. But it was, I'm going to say,
 5 six months. But that's totally a guess
 6 and I don't guess that's -- you know.
 7 **Q. I realize dates are hard and I'm**
 8 **just trying to get an idea of generally**
 9 **if it was a month or two or if it was a**
 10 **year or what. And that sounds like it**
 11 **was somewhere in between.**
 12 A. Uh-huh.
 13 **Q. Did she leave SYSCO voluntarily?**
 14 A. Yes.
 15 **Q. How long have y'all been**
 16 **married? It's a tough question, I know.**
 17 A. We were married -- I'm trying to
 18 think. I'm glad she's not sitting here.
 19 But October the 25th, 1986.
 20 **Q. Okay.**
 21 A. Now, Laura and I separated for
 22 two years or actually were divorced for
 23 two years and then remarried. So I

Page 15

1 don't know if -- overall, I guess, you
 2 know, 18 years cumulatively.
 3 **Q. When did y'all divorce for those**
 4 **two years?**
 5 A. '93 through '95, I guess.
 6 **Q. Have you been married to anybody**
 7 **other than Laura?**
 8 A. No, I have not.
 9 **Q. Ever been engaged to anybody**
 10 **other than Laura?**
 11 A. Nobody other than Laura.
 12 **Q. Okay. And I realize this is**
 13 **going to be kind of a broad question,**
 14 **but do you have any relatives that live**
 15 **there in Alex City with y'all or in that**
 16 **area?**
 17 A. My mother lives there. My
 18 sister lives there. Now, by relative,
 19 do you mean blood relative to me or --
 20 **Q. Well, let's start with --**
 21 A. Okay.
 22 **Q. Does your mom live by herself?**
 23 A. She does.

Page 16

1 **Q. What is her name?**
 2 A. Her -- Willie, W-I-L-L-I-E, Jo,
 3 J-O, Adams.
 4 **Q. And what's your sister's name?**
 5 A. Her name is Nyla, N-Y-L-A,
 6 Parrish.
 7 **Q. Is that P-A-R-I-S-H?**
 8 A. Two Rs.
 9 **Q. Two Rs. And does she live in**
 10 **Alex City?**
 11 A. She does.
 12 **Q. What's her husband's name?**
 13 A. She's not married.
 14 **Q. Not married. Okay. Does she**
 15 **have any children over 18?**
 16 A. No children, period.
 17 **Q. Do you have any other brothers**
 18 **or sisters that live in the area?**
 19 A. My brother lives in Montgomery.
 20 **Q. What's his name?**
 21 A. William.
 22 **Q. Is he married?**
 23 A. He is.

4 (Pages 13 to 16)

367 VALLEY AVENUE
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 17</p> <p>1 Q. What's his wife's name?</p> <p>2 A. Carla.</p> <p>3 Q. Do they have any children?</p> <p>4 A. A daughter, A</p> <p>5 Q. How old is she?</p> <p>6 A. 11 or 12.</p> <p>7 Q. Any other brothers or sisters</p> <p>8 that --</p> <p>9 A. No. Just the two siblings.</p> <p>10 Q. Okay. Have you got any other</p> <p>11 blood relatives that live in the area?</p> <p>12 A. Got my uncle. Eldridge Bolin</p> <p>13 lives in Alex City.</p> <p>14 Q. Is he married?</p> <p>15 A. He is.</p> <p>16 Q. What's his wife's name?</p> <p>17 A. Willa Jean.</p> <p>18 Q. And as I said, the reason I ask,</p> <p>19 this is just for a jury, just to know --</p> <p>20 if we go to trial and we get a jury, I</p> <p>21 just kind of need to know who your</p> <p>22 family is. Because I know for the most</p> <p>23 part, you want them on the jury. We</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Okay.</p> <p>2 Q. -- probably 90 miles or so</p> <p>3 around there, I guess. Well, 60,</p> <p>4 somewhere in there. Not as far north as</p> <p>5 Birmingham. No further north than</p> <p>6 Clanton.</p> <p>7 How about your wife, does she</p> <p>8 have any family in the area?</p> <p>9 A. Uh-huh. Her mom and dad both</p> <p>10 live there.</p> <p>11 Q. What's their names?</p> <p>12 A. Larry and Joyce Peterson.</p> <p>13 Q. Does she have any other</p> <p>14 siblings?</p> <p>15 A. Her sister Rhonda Langford. Her</p> <p>16 husband is Jerry.</p> <p>17 Q. Do they have any children over</p> <p>18 18?</p> <p>19 A. Two.</p> <p>20 Q. Okay. What are their names?</p> <p>21 A. Cameron Langford and their</p> <p>22 daughter Casey. Lambert is her married</p> <p>23 name. She -- actually, Casey lives in</p>
<p style="text-align: right;">Page 18</p> <p>1 wouldn't. So I've got to ask those</p> <p>2 questions. Do Eldridge and Willa Jean</p> <p>3 have any children over 18?</p> <p>4 A. Actually, it's -- Willa Jean is</p> <p>5 his second wife. My aunt died.</p> <p>6 Q. Okay.</p> <p>7 A. So uncle's got a daughter named</p> <p>8 Gloria Payne that lives in -- or Gloria</p> <p>9 Willis, excuse me, that lives in</p> <p>10 Dadeville.</p> <p>11 Q. All right. Have you got any</p> <p>12 other blood relatives in the area?</p> <p>13 A. Not in the area, no.</p> <p>14 Q. And I guess when I say "in the</p> <p>15 area," I kind of mean Montgomery, Alex</p> <p>16 City.</p> <p>17 A. I've got an uncle and aunt that</p> <p>18 live here in Birmingham.</p> <p>19 Q. Okay. And that's fine.</p> <p>20 A. Okay.</p> <p>21 Q. We're in the Middle District of</p> <p>22 Alabama, which would cover Montgomery</p> <p>23 and --</p>	<p style="text-align: right;">Page 20</p> <p>1 Atlanta. Cameron lives in Opelika.</p> <p>2 Q. Okay. Does your wife have any</p> <p>3 other siblings?</p> <p>4 A. Sister Lisa Whitman lives in</p> <p>5 Notasulga.</p> <p>6 Q. Where is that?</p> <p>7 A. Between Auburn and Montgomery.</p> <p>8 It's in Macon County, I believe, but --</p> <p>9 Q. Okay. Is she married?</p> <p>10 A. No.</p> <p>11 Q. Any other siblings your wife</p> <p>12 has?</p> <p>13 A. A sister, Jean Peterson.</p> <p>14 Q. Where does she live?</p> <p>15 A. She lives in Alex City.</p> <p>16 Q. Is she married?</p> <p>17 A. No.</p> <p>18 Q. Any children over 18?</p> <p>19 A. No. Now, Lisa does have two</p> <p>20 daughters that are over 18.</p> <p>21 Q. Does she? Okay. What are their</p> <p>22 names, or where do they live, I guess</p> <p>23 first?</p>

5 (Pages 17 to 20)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 21	Page 23
<p>1 A. Well, both live in Notasulga.</p> <p>2 Q. Okay. What are their names, if</p> <p>3 you remember?</p> <p>4 A. Kelly is -- Kelly Whitman and</p> <p>5 Brittany Weldon.</p> <p>6 Q. All right. Does your wife have</p> <p>7 any other family in the area?</p> <p>8 A. Not in the area, no.</p> <p>9 Q. Do you go to church?</p> <p>10 A. (Witness nods head.) Yes.</p> <p>11 Q. Where do you go?</p> <p>12 A. Calvary Heights Baptist.</p> <p>13 Q. Is that in Alex City?</p> <p>14 A. Yes.</p> <p>15 Q. Are you a member of any social</p> <p>16 clubs or anything in Alex City?</p> <p>17 A. No.</p> <p>18 Q. Any hunting lodges or fishing</p> <p>19 lodges or anything?</p> <p>20 A. No. My brother and I, we've got</p> <p>21 a farm in Coosa County, but --</p> <p>22 Q. Other than the lawsuit you filed</p> <p>23 against Merchants Foodservice, have you</p>	<p>1 A. I know one was speeding. And, I</p> <p>2 mean, all these were back 20, 25 years</p> <p>3 ago. I don't --</p> <p>4 Q. Ever been arrested?</p> <p>5 A. For a traffic violation, yes.</p> <p>6 Q. But other than the traffic?</p> <p>7 A. No. No. No.</p> <p>8 Q. Okay. Have you ever filed</p> <p>9 what's called a charge of discrimination</p> <p>10 with the Equal Employment Opportunity</p> <p>11 Commission?</p> <p>12 A. No.</p> <p>13 Q. Ever filed a workers' comp</p> <p>14 claim?</p> <p>15 A. No.</p> <p>16 Q. So I take it you've never sought</p> <p>17 Social Security disability or anything</p> <p>18 like that?</p> <p>19 A. No.</p> <p>20 Q. Where did you go to high school?</p> <p>21 A. Benjamin Russell.</p> <p>22 Q. Where is that?</p> <p>23 A. There in Alex City.</p>
Page 22	Page 24
<p>1 filed any other lawsuits?</p> <p>2 A. No.</p> <p>3 Q. Have you ever been involved,</p> <p>4 other than this one, in a lawsuit as a</p> <p>5 witness or anything like that?</p> <p>6 A. No.</p> <p>7 Q. And I know you've got the</p> <p>8 divorce. I assume you went to court for</p> <p>9 that. But other than that, have you</p> <p>10 ever been to court for anything?</p> <p>11 A. No.</p> <p>12 Q. Ever been called to a jury?</p> <p>13 A. I served on jury duty one time.</p> <p>14 Q. What kind of case was it?</p> <p>15 A. The case I actually got struck</p> <p>16 for the jury on was a murder case.</p> <p>17 Q. Okay. Any other time you've</p> <p>18 been to court?</p> <p>19 A. Just traffic violations.</p> <p>20 Q. Traffic violations?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. What type of traffic</p> <p>23 violations?</p>	<p>1 Q. Have you pretty much lived in</p> <p>2 Alex City all of your life?</p> <p>3 A. Other than the time I was at</p> <p>4 school at Auburn, yeah. I mean, I've</p> <p>5 always been a full-time Alex City</p> <p>6 resident, I guess.</p> <p>7 Q. What year did you graduate from</p> <p>8 Benjamin Russell?</p> <p>9 A. 1977.</p> <p>10 Q. Did you go to Auburn after you</p> <p>11 graduated?</p> <p>12 A. No. Actually, I went to the</p> <p>13 junior college there in Alex City for</p> <p>14 two years.</p> <p>15 Q. What junior college is that?</p> <p>16 A. Now it's called Central Alabama</p> <p>17 Community College. When I went, it was</p> <p>18 Alexander City Junior College.</p> <p>19 Q. Did you get a degree from there?</p> <p>20 A. I think you call it an</p> <p>21 associates or whatever, but --</p> <p>22 Q. Okay. Was it in anything in</p> <p>23 particular?</p>

6 (Pages 21 to 24)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 25

1 A. No.
 2 Q. Where did you go after you got
 3 that degree?
 4 A. When I left the junior college,
 5 I went to Auburn. That's when I went to
 6 Auburn.
 7 Q. And the junior college was a
 8 two-year program?
 9 A. Two-year.
 10 Q. Did you get a degree from
 11 Auburn?
 12 A. No, I did not.
 13 Q. How long were you there?
 14 A. Two quarters.
 15 Q. Why did you leave?
 16 A. I broke my collarbone during
 17 spring break and didn't go to school
 18 that quarter because of just being
 19 incapacitated and --
 20 Q. Just didn't go back?
 21 A. Just didn't go back.
 22 Q. Okay. Any other schooling?
 23 A. Actually, ten years later, I

Page 26

1 enrolled at Faulkner in Montgomery and
 2 actually have my bachelor's degree from
 3 Faulkner.
 4 Q. How long did that take?
 5 A. I think it was -- and, there
 6 again, I'm going to say a year.
 7 Q. Okay. Is it in a particular
 8 area, the bachelor's degree?
 9 A. It's business administration, is
 10 what my degree or diploma says.
 11 Q. Any other type of any other
 12 schooling?
 13 A. No.
 14 Q. Have you had any other type of
 15 training or anything? And I assume you
 16 probably did with jobs that you were
 17 hired into --
 18 A. Yeah.
 19 Q. -- you got some training. But
 20 anything outside --
 21 A. Nothing as far as formal
 22 education, no.
 23 Q. And I guess talking about

Page 27

1 on-the-job training, let's kind of work
 2 through your employment history. When
 3 you got out of school, when you left
 4 Auburn, did you go to work after that?
 5 A. Yes, I did. I worked at Russell
 6 Corporation.
 7 Q. What did you do at Russell?
 8 A. I don't remember the order in --
 9 the chronological order. But, I mean,
 10 I've knitted there. I worked in screen
 11 printing. Worked in the trim department
 12 and --
 13 Q. Were you ever a supervisor --
 14 A. No.
 15 Q. -- at Russell?
 16 A. No.
 17 Q. How long did you work there?
 18 A. I guess until 1984 is when I
 19 went in the car business, so --
 20 (Interruption.)
 21 Q. (BY MR. DYKES:) What made you
 22 decide to leave Russell and go into the
 23 car business?

Page 28

1 A. The owner of the Ford dealership
 2 was a good friend of mine and just made
 3 it sound like something I'd want to do.
 4 Q. Was it better pay?
 5 A. I made more money there, yes.
 6 Q. What did you do at the Ford
 7 dealership?
 8 A. New and used car sales.
 9 Q. Do you have a schedule that you
 10 worked?
 11 A. We worked some form of Monday
 12 through Friday and then a half a day on
 13 Saturday.
 14 Q. Were you ever a supervisor
 15 there?
 16 A. No.
 17 Q. Did you notice if the
 18 supervisors worked more than the
 19 salesmen?
 20 A. They didn't.
 21 Q. Where did you go from the Ford
 22 dealership?
 23 A. I went to work for Everett

7 (Pages 25 to 28)

367 VALLEY AVENUE
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 29</p> <p>1 Meadows Construction.</p> <p>2 Q. Why did you leave and go to</p> <p>3 Everett Meadows?</p> <p>4 A. Just it got to where I could no</p> <p>5 longer make a living in the car</p> <p>6 business.</p> <p>7 Q. Why was that?</p> <p>8 A. I wasn't selling any cars.</p> <p>9 Q. Did you leave voluntarily, or</p> <p>10 were you asked to leave?</p> <p>11 A. Yes -- no. They asked me --</p> <p>12 tried to get me to stay and offered to</p> <p>13 change my pay structure, but I'd already</p> <p>14 committed to take this other job.</p> <p>15 Q. When you were having trouble</p> <p>16 selling cars, did you try to work longer</p> <p>17 hours or anything to help with that?</p> <p>18 A. I don't understand your</p> <p>19 question.</p> <p>20 Q. Well, did you try to be in the</p> <p>21 store more in hopes of selling more</p> <p>22 cars?</p> <p>23 A. Well, the dealership had certain</p>	<p style="text-align: right;">Page 31</p> <p>1 same. They, you know, warehouse</p> <p>2 groceries during the day and select them</p> <p>3 and ship them at night, so --</p> <p>4 Q. Did you say you went in as an</p> <p>5 operations manager for them?</p> <p>6 A. No, I did not.</p> <p>7 Q. What job did you go into there</p> <p>8 as?</p> <p>9 A. I actually started -- they hired</p> <p>10 me to be -- I'm going to call it a</p> <p>11 relief salesperson --</p> <p>12 Q. Okay.</p> <p>13 A. -- to learn the vacation routes</p> <p>14 of the various salespeople, so when they</p> <p>15 were off or whatever, I could fill in</p> <p>16 and run those routes. And the other</p> <p>17 part of my time, I spent as a buyer</p> <p>18 buying the retail grocery items and</p> <p>19 candy and tobacco.</p> <p>20 Q. Kind of walk me through your</p> <p>21 progression there, in terms of what job</p> <p>22 you went to next and so on.</p> <p>23 A. Within that company?</p>
<p style="text-align: right;">Page 30</p> <p>1 hours they were open and that's the</p> <p>2 hours I worked.</p> <p>3 Q. Okay. So you tried to be there</p> <p>4 when the dealership was open to help</p> <p>5 sell cars?</p> <p>6 A. Yes, I guess, to answer your</p> <p>7 question.</p> <p>8 Q. At Everett Meadows, did you just</p> <p>9 work as a carpenter?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Okay. Were you ever a</p> <p>12 supervisor there?</p> <p>13 A. No.</p> <p>14 Q. Why did you leave Everett</p> <p>15 Meadows?</p> <p>16 A. I was offered the job at Alex</p> <p>17 City Provision Company.</p> <p>18 Q. What type of company is that?</p> <p>19 A. They are a wholesale food</p> <p>20 distributor.</p> <p>21 Q. How does what they do compare to</p> <p>22 what Merchants Foodservice does?</p> <p>23 A. In essence, I guess they're the</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Yeah.</p> <p>2 A. Just in that position till -- I</p> <p>3 think they hired me with -- in mind of</p> <p>4 me working my way into sales full-time</p> <p>5 and that didn't transpire. So when I</p> <p>6 wasn't needed in the relief role of</p> <p>7 sales, I actually worked in the</p> <p>8 warehouse along with the operations</p> <p>9 manager and just learning how the</p> <p>10 warehouse works and that type stuff.</p> <p>11 And the operations manager actually had</p> <p>12 a heart attack in -- somewhere there, I</p> <p>13 think -- don't recall the year. But he</p> <p>14 was out of work for a long period of</p> <p>15 time. He had open heart surgery. When</p> <p>16 he returned, he needed to be on</p> <p>17 limited/light duty, so we just more or</p> <p>18 less did a role reversal. He became me</p> <p>19 and I became him.</p> <p>20 Q. When did you become the</p> <p>21 operations manager there? Do you know a</p> <p>22 date or time frame?</p> <p>23 A. When he returned to work is --</p>

8 (Pages 29 to 32)

FREEDOM COURT REPORTING

Page 33

1 and was given his limited ability or
2 what he could do because of his
3 condition, when that happened or time
4 frame on it as far as pinning it down, I
5 can't.

6 **Q. Do you know how long you worked
7 as an operations manager there?**

8 A. Probably three-plus years.

9 **Q. As the operations manager there,
10 who did you report to?**

11 A. The owner of the company.

12 **Q. So it was the owner and then it
13 was the ops manager. Was there any
14 other type of manager there that was
15 higher than you or the same level as
16 you?**

17 A. Same level as me would have been
18 the sales manager who was over sales.

19 **Q. Okay. What did you do as the
20 operations manager?**

21 A. Responsible for the day shift
22 operations, the night shift operations,
23 and transportation.

Page 35

1 morning shift, I've helped start the
2 night shift, and just in between.

3 **Q. As the operations manager, were
4 you kind of responsible to make sure
5 things got done?**

6 A. Well, actually, I had
7 supervisors who were responsible, but I
8 was ultimately -- the ultimate
9 responsible person, yes.

10 **Q. Did you work nights during that
11 time period?**

12 A. I did.

13 **Q. Did you work any Saturdays?**

14 A. Maybe once or -- one or two
15 Saturdays in a five-year period. We
16 just didn't open on Saturdays.

17 **Q. As the operations manager there,
18 if you were getting ready to go and
19 there was a problem that needed to be
20 fixed, would you stay to help fix the
21 problem or would you leave?**

22 A. When that happened, I would
23 stay.

Page 34

1 **Q. As the ops manager, did you have
2 a set schedule that you worked?**

3 A. The last couple of years I
4 worked there, I did. It was sort of --
5 when I first took over, it was sort of
6 as-needed.

7 **Q. What was the name of the owner?**

8 A. Hugh Nabors.

9 **Q. And who was the sales manager?**

10 A. Wayne Fuller, and then he was
11 followed up by John Spain. John was the
12 sales manager when I left.

13 **Q. Okay. You said the last couple
14 of years you had more of a set schedule.
15 Before that, you said it was kind of all
16 over the place?**

17 A. Uh-huh.

18 **Q. What do you mean by that?**

19 A. The warehouse didn't run as
20 smooth then as I would like. It had
21 some problems, some issues, and I would
22 work when I needed to, you know, as far
23 as I've come in to help finish the

Page 36

1 **Q. Is that something you think is
2 expected of an operations manager?**

3 A. Well, I'm going to say he should
4 have it running where he doesn't have
5 those problems come up. But on given
6 limited times, then, yes, if it happened
7 every now and then, he should stay. But
8 if it's happening more than
9 occasionally, he's got something wrong
10 with the way he's running the place or
11 there's something wrong with the way the
12 place is being run.

13 **Q. So let's say it's happening more
14 than occasionally, what would you -- I
15 mean, what do you think, as operations
16 manager, should be done to fix it?**

17 A. I guess find out what the --
18 what the problem is and address that.
19 And if you fix the problem, the problem
20 will go away.

21 **Q. And trying to fix the problem,
22 could that require more work for the
23 operations manager?**

9 (Pages 33 to 36)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 37

1 A. Yes, it could.

2 Q. Would it be surprising if it
3 required more work to try to fix the
4 problem that was there in the
5 operations?

6 A. I guess I want to say something
7 here that I --

8 MR. BLYTHE: Go ahead and say
9 what you want to say.

10 A. I mean, I see where you're
11 heading me or trying to point me. My
12 whole point here is that I had no idea
13 the place was in the mess it was in when
14 I went to work there. That's not what I
15 was told. Had I known it was in a mess,
16 I wouldn't have been the one there
17 trying to fix it.

18 Q. Okay. And --

19 A. So --

20 Q. And I understand that. But if
21 you're working as the operations manager
22 and there's a problem, it would be your
23 job as operations manager to try to fix

Page 38

1 it?

2 A. Yes.

3 Q. When you were not the operations
4 manager at Alex City Provision, did
5 your -- did the operations manager who
6 had the heart attack, when there were
7 problems, would he stay and fix them?

8 A. He or myself, one, would, yes.

9 Q. And what was the name of the
10 previous operations manager there?

11 A. His name was Austin Roberson.

12 Q. As operations manager there --
13 and I'm still talking about at Alex City
14 Provision -- did things always run as
15 smoothly as you anticipated?

16 A. At what -- are you talking about
17 the entire time there?

18 Q. When you were the operations
19 manager.

20 A. At the beginning, no. Like I
21 said, the last couple of years, they ran
22 real smooth.

23 Q. Was there ever any turnover

Page 39

1 among your employees?

2 A. Yes.

3 Q. Did you ever lose any managers
4 or any supervisors while you worked
5 there?

6 A. Not while I was employed there,
7 no. I've had one guy that was my day
8 shift manager there. George Bluestill
9 is still there. And the night manager,
10 Mark Lightsey -- well, actually, he
11 replaced George, who died. But the last
12 time I was by there, Mark was still
13 working there and they were there the
14 whole time I was operations manager.

15 Q. Were you paid a salary there?

16 A. I was.

17 Q. Did you get the same salary no
18 matter how many hours you worked?

19 A. I did.

20 Q. How did your vacation work
21 there?

22 A. After you'd been there a year,
23 you got a week. I think it was two

Page 40

1 weeks after two years, and then three
2 after ten.

3 Q. Could you always take vacation
4 when you wanted to?

5 A. I was never denied a request,
6 no.

7 Q. Did y'all have an employee
8 handbook at the facility?

9 A. Alex City Provision?

10 Q. Uh-huh.

11 A. We did.

12 Q. Okay. Was it your understanding
13 that the policies in the employee
14 handbook were the policies that applied
15 to the employees?

16 A. Yes. I mean, they're there as a
17 guideline. I mean, you can -- I guess
18 some human element factors in, in
19 certain circumstances. But by and
20 large, they're there for that purpose,
21 yeah.

22 Q. Okay. Was the owner of the
23 facility a hands-on owner, or was he

10 (Pages 37 to 40)

FREEDOM COURT REPORTING

Page 41

1 somebody who was hands off?
 2 A. I don't understand your question
 3 the way it's posed. I mean, he was at
 4 work every day, yes.
 5 Q. Okay. That's what I'm just --
 6 do you know what type of hours he
 7 worked?
 8 A. I don't.
 9 Q. Did you have any type of an
 10 incentive program?
 11 A. At Alex City Provision?
 12 Q. At Alex City Provision.
 13 A. No, I did not.
 14 Q. So did you make your salary and
 15 then was there any possibility of
 16 getting more pay per year than what your
 17 annual salary was going to be?
 18 A. No.
 19 Q. Where did you go to work after
 20 Alex City Provision?
 21 A. SYSCO Foods.
 22 Q. Is it still known as Alex City
 23 Provision?

Page 42

1 A. No. Actually, it's -- they
 2 changed the name. It's Alabama Food
 3 Group now.
 4 Q. Was that while you were working
 5 there or --
 6 A. No. It was after I left.
 7 Q. Okay. What job did you go to
 8 SYSCO as?
 9 A. Day shift supervisor.
 10 Q. Supervisor? Okay.
 11 Why did you leave Alex City
 12 Provision?
 13 A. SYSCO announced they were going
 14 to build a facility in Alabama. I guess
 15 anybody in the food service business --
 16 or that's what I thought at that time.
 17 You know, you see SYSCO in every trade
 18 publication, blah-blah-blah. I just,
 19 exploratory more than anything, started
 20 the process of trying to find out how to
 21 go to work for them. Then when I
 22 learned more about the benefits, which
 23 far outweighed what I had at Alex City

Page 43

1 Provision, the starting pay, as a
 2 supervisor, was several thousand dollars
 3 more than what I was making as the ops
 4 manager at Alex City Provision. So just
 5 salary and benefits I guess, you know,
 6 what that provided me to be able to do.
 7 Q. Where was the SYSCO plant built?
 8 A. Where?
 9 Q. Yes.
 10 A. Calera.
 11 Q. How close is that to Alex City?
 12 A. 62 miles.
 13 Q. How long did it take you to get
 14 there?
 15 A. On a good day, a little less
 16 than an hour. On a bad day, an hour and
 17 five minutes.
 18 Q. Did SYSCO make you a formal
 19 offer to come work for them?
 20 A. Yes, they did.
 21 Q. What was it? Do you remember
 22 what that was?
 23 A. As far as --

Page 44

1 Q. What the amount was of the
 2 offer? What your pay was going to be?
 3 A. My salary was -- to start was
 4 \$40,000 a year.
 5 Q. Was there going to be an
 6 incentive program there?
 7 A. There was.
 8 Q. How did that work?
 9 A. They would set forth a certain
 10 criteria at the beginning of each fiscal
 11 year. And depending, you know, it was
 12 six to eight categories that you could
 13 excel in and there were certain levels
 14 within those categories that you
 15 achieved a certain percentage. And
 16 whatever percentage you got, that was --
 17 times your salary was your bonus.
 18 Q. Did Alex City Provision make a
 19 counteroffer to you or do anything to
 20 try to get you to stay?
 21 A. He asked me -- Hugh, when I met
 22 with him to tell him that I was leaving,
 23 he offered to do whatever it would take

11 (Pages 41 to 44)

FREEDOM COURT REPORTING

Page 45

1 to keep me.

2 **Q. What did you tell him?**

3 A. That I'd already committed to
4 Eddie O'Connor that I would take the
5 job.

6 **Q. What's the job title of Eddie
7 O'Connor?**

8 A. When I first went to work for
9 him, he was director of operations and
10 during the interim a year or so later,
11 he was named vice president of
12 operations.

13 **Q. I want to go back to the bonus
14 program there at SYSCO. What was the
15 maximum percent bonus you could earn at
16 SYSCO?**

17 A. I don't remember exactly the
18 formula for what it was. The last year
19 I was there, my bonus was almost
20 \$10,000, so you can equate that to an
21 annual salary of -- I made \$992 a week,
22 so it was almost 52,000 a year and my
23 bonus was 10, so whatever that

Page 46

1 formula -- that works out to be.

2 **Q. Was that the largest bonus you
3 got while you worked there?**

4 A. It was.

5 **Q. How did the 10,000 compare --
6 and I know it was your largest. But, I
7 mean, was it significantly larger than
8 you other bonuses or --**

9 A. To the best of my recollection,
10 I have had as small a bonus as 4,200 and
11 then I've had some that were 5 and
12 7,000.

13 **Q. Kind of depended on how the
14 operations were?**

15 A. How my numbers were, yeah.

16 **Q. In your job as day shift
17 supervisor at SYSCO, tell me what you
18 did.**

19 A. On day shift, we actually --
20 that's when all the inbound freight came
21 in. We did receiving, is what it's
22 called. And we would actually unload
23 the trucks, palletize the merchandise to

Page 47

1 the tie and high, which is so many per
2 layer, so many high, so it would fit in
3 the correct slot. And then do the
4 put-aways, which is actually putting the
5 merchandise into the warehouse. And
6 once they scan the pallet complete,
7 that's what entered it into your
8 inventory. And then we also did
9 letdowns or replenishments, which is
10 preparing the warehouse for the night
11 shift to start their selection process
12 so they've got full slots to start
13 selecting on when they came in.

14 **Q. Were you in that job the whole
15 time you worked at SYSCO?**

16 A. I was.

17 **Q. What were the day shift hours?**

18 A. A normal day -- we started every
19 morning at 6:00. I tried to arrive 15
20 minutes early just so I could go ahead
21 and do the letdowns for the day, which
22 involved signing on the computer and
23 just going to a program and printing off

Page 48

1 the slots that were empty that could be
2 full. The crew would show up at 6:00
3 and we'd have a brief two to five
4 minutes -- a little preshift meeting,
5 then the shift would go to work.

6 **Q. Okay. What was the typical
7 shift?**

8 A. We tried to control our inbound
9 freight and we knew a certain number of
10 pallets, if everything showed up on
11 time, what we could do. But we tried to
12 keep our overtime to a minimum. So, you
13 know, we scheduled our day where
14 typically the crew was gone by 2:30 in
15 the afternoon, 2:45.

16 **Q. How big a crew did you have?**

17 A. On the dry side, there were
18 three and six. We started out -- when
19 we started, we had six receivers and 12
20 lift operators. When I left, we were --
21 just because the people had learned
22 their job, blah-blah-blah, whatever, and
23 we could handle more freight and do it

12 (Pages 45 to 48)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 49</p> <p>1 with less people, I think I had five 2 receivers and ten full-time lift 3 operators. 4 Of course, we had a recoup 5 person that would take care of what 6 damage we had. Had an inbound scheduler 7 and a will-call person who actually took 8 care of the phone-in orders for 9 customers that wanted to come pick a 10 case of this or that up through 11 will-call, so -- 12 Q. Okay. 13 A. -- probably 15, 16 people. 14 Q. Okay. At the Alex City 15 Provision, how many folks were you in 16 charge of? 17 A. 12. No, don't -- let me add up. 18 I'm trying to think. 12 and eight is 19 20. Probably 28 to 35, something like 20 that. Then that's just strictly a 21 guess. 22 Q. Size-wise, how did Alex City 23 Provision compare to Merchants</p>	<p style="text-align: right;">Page 51</p> <p>1 there? 2 A. Yes. 3 Q. Who did you report to as day 4 shift supervisor at SYSCO? 5 A. My direct report was Kenny 6 Bowman. 7 Q. What was his job title? 8 A. He was day shift manager. 9 Q. And who did Kenny report to? 10 A. His direct report would have 11 been Doug Vertein. 12 Q. Do you know how to spell that? 13 A. V-E-R-T-E-I-N. 14 Q. What was his job? 15 A. He was the operations manager. 16 Q. What type of schedule did Kenny 17 Bowman work? 18 A. Kenny normally got there 19 probably around 7:00 and then left after 20 me in the afternoon. 21 Q. How about Doug Vertein? 22 A. Doug was 8:00 to 5:00. 23 Q. How do you know he was 8:00 to</p>
<p style="text-align: right;">Page 50</p> <p>1 Foodservice? 2 A. Alex City Provision was 3 probably -- probably did -- and this is 4 a guess. 5 Q. Right, I understand that. 6 A. From the time I left till I went 7 to Merchants, a lot transpired in there, 8 but -- 9 Q. Well, just while you were 10 working at Alex City Provision, how did 11 it compare numbers-wise to when you 12 started at Merchants Foodservice? 13 A. They probably did 35 to 40 14 percent of the business that Merchants 15 did. 16 Q. Did that mean that there were 17 more trucks coming and going at 18 Merchants than there were at Alex City 19 while you were there? 20 A. Yes. 21 Q. Were there more people working 22 at Merchants Foodservice than there were 23 at Alex City Provision while you were</p>	<p style="text-align: right;">Page 52</p> <p>1 5:00? 2 A. That's what he always said. He 3 couldn't wait on 5:00 to get there where 4 he could leave, so -- 5 Q. Who did Doug report to? 6 A. He reported to Eddie O'Connor. 7 Q. Who was the VP of ops? 8 A. Uh-huh. 9 Q. Do you know if Doug Vertein's 10 schedule changed depending on what was 11 going on at work? 12 A. I can't -- I mean, to my 13 knowledge, no. I mean, if -- I'm not 14 saying that that was his schedule, 15 verbatim, the whole time I was there. 16 It could have deviated from time to 17 time. But that was pretty much 18 predominantly his schedule. 19 Q. But you left, most days, a 20 couple of hours before he would leave? 21 A. Exactly. 22 Q. So, typically, you weren't there 23 when he left?</p>

13 (Pages 49 to 52)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 53</p> <p>1 A. No.</p> <p>2 Q. Okay. So the way you know or</p> <p>3 have knowledge of when he left is just</p> <p>4 from him saying he was 8:00 to 5:00?</p> <p>5 A. Right.</p> <p>6 Q. Was SYSCO open on weekends?</p> <p>7 A. We're closed on Saturday. Now,</p> <p>8 we actually had a crew that would come</p> <p>9 in on Sunday and work from 8:00 to 12:00</p> <p>10 on Sunday to do fresh chicken and</p> <p>11 produce so we'd have fresh product to go</p> <p>12 out of the warehouse Monday morning.</p> <p>13 Q. Did you ever work on Sundays?</p> <p>14 A. I have, yes.</p> <p>15 Q. As a daytime manager, I assume</p> <p>16 you probably didn't work nights at</p> <p>17 SYSCO.</p> <p>18 A. The only nights I worked at</p> <p>19 SYSCO were -- I think two different</p> <p>20 years, we did a role reversal, so to</p> <p>21 speak, where I would trade places with</p> <p>22 one of the night shift supervisors and</p> <p>23 work.</p>	<p style="text-align: right;">Page 55</p> <p>1 the house there that are still there</p> <p>2 driving forklifts and still receiving.</p> <p>3 I mean, probably three-fourths of the</p> <p>4 crew that I started with is still there.</p> <p>5 Q. On the day shift?</p> <p>6 A. On the day shift.</p> <p>7 Q. Okay. But you weren't</p> <p>8 responsible for night shift?</p> <p>9 A. No.</p> <p>10 Q. So you don't personally know</p> <p>11 what type of turnover there was at</p> <p>12 night?</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you know what type of</p> <p>15 turnover there was among the drivers?</p> <p>16 A. No idea. There again, like the</p> <p>17 ones I knew, the drivers that actually</p> <p>18 worked out of there, not shuttle</p> <p>19 drivers, the same faces were there and</p> <p>20 still are today, you know. So I'm</p> <p>21 assuming it's relatively low because the</p> <p>22 same ones that were there when I started</p> <p>23 were there when I left.</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay.</p> <p>2 A. And he would work days.</p> <p>3 Q. Was there ever any turnover</p> <p>4 amongst the folks on your day shift at</p> <p>5 SYSCO?</p> <p>6 A. During the course of my time</p> <p>7 there, there were a few that left.</p> <p>8 Q. How many, do you think, left?</p> <p>9 A. Just a guess?</p> <p>10 Q. Yeah.</p> <p>11 A. While I was there, I would say</p> <p>12 on day shift, probably less than six.</p> <p>13 Q. How about night shift, do you</p> <p>14 know what kind of turnover they had?</p> <p>15 A. I don't. I know they would talk</p> <p>16 about in meetings that our night shift</p> <p>17 turnover rate was lower than it had --</p> <p>18 you know, than any other SYSCO house,</p> <p>19 comparatively speaking. But to put a</p> <p>20 number on it, I can't. I mean, I've</p> <p>21 still got friends that work at SYSCO</p> <p>22 that were forklift operators for me from</p> <p>23 the very beginning of -- you know, of</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Right. But, again, you weren't</p> <p>2 there so you weren't over</p> <p>3 transportation?</p> <p>4 A. No. No, sir.</p> <p>5 Q. At SYSCO, were you paid a</p> <p>6 salary?</p> <p>7 A. I was.</p> <p>8 Q. Do you get the same salary every</p> <p>9 paycheck?</p> <p>10 A. Until July the 1st when we got</p> <p>11 our raise, yeah, my salary was the same.</p> <p>12 Q. Be no matter how many hours you</p> <p>13 worked, you got the same salary?</p> <p>14 A. Right. And that's -- I knew</p> <p>15 that going in, so --</p> <p>16 Q. Okay. So if you went on those</p> <p>17 days you went in on a Sunday, that</p> <p>18 didn't affect your salary?</p> <p>19 A. Well, it didn't. But I'd get a</p> <p>20 day off the next week for that.</p> <p>21 Q. Do you always get a day off the</p> <p>22 next week?</p> <p>23 A. Yes. They actually had it where</p>

14 (Pages 53 to 56)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 57</p> <p>1 we would take the following Friday 2 because we gave up a day of our weekend. 3 The week we worked, they gave it to us 4 the following Friday to extend that 5 weekend to make up for it. 6 Q. Do you know how many Sundays the 7 operations manager worked? 8 A. None. 9 Q. Never worked any? 10 A. Not that I'm aware of. 11 Q. If he worked a Sunday that you 12 weren't there, you wouldn't know if he 13 was there? 14 A. I wouldn't know it. 15 MR. BLYTHE: Is this a good 16 place to take a break? 17 MR. DYKES: Yeah. We can take a 18 break. That's fine. 19 (A break was taken.) 20 Q. (BY MR. DYKES:) As the day 21 shift operator or day shift manager at 22 SYSCO, if there were problems that 23 happened on your shift, would you have</p>	<p style="text-align: right;">Page 59</p> <p>1 have to stay till 6:00 or later to fix a 2 problem? 3 A. I-- no, I guess not. I mean, 4 you're speaking in the hypothetical, I 5 guess, but -- 6 Q. It's not something that would -- 7 if you're an operations manager of a 8 facility and there's a problem that 9 needs to be fixed, as operations 10 manager, you would want to make sure you 11 stayed to get it fixed? 12 A. I would want it fixed, yes. 13 Q. Yeah. Okay. Even if that meant 14 you're staying a little longer than you 15 had anticipated? 16 A. Yes. 17 Q. The Alex City Provision, was 18 that family owned? 19 A. It was. 20 Q. How did you like working for a 21 family-owned company? 22 A. Hugh was always good to me as 23 far as -- you know, I didn't have a</p>
<p style="text-align: right;">Page 58</p> <p>1 to stay late to fix those? 2 A. When we -- when we had problems, 3 we fixed them, yes. I mean, you didn't 4 leave stuff unattended, so -- 5 Q. Do you know, was it the same way 6 for the ops manager? If there were 7 problems, he would be responsible for 8 staying until they got fixed? 9 A. Now, any responsible [sic] that 10 I had to stay for always happened within 11 the scope of his regular scheduled time 12 anyway. I mean, it wasn't like I was 13 there after 5:00 putting fires out or 14 anything like that. So I don't know. 15 Q. But you typically left at 3:00, 16 so if a problem came up and you needed 17 to fix it, you might have to stay till 18 4:00? 19 A. Yeah. 20 Q. Okay. And with the ops manager, 21 I know you weren't there when he left, 22 but would you have been surprised if a 23 problem came up at 5:00, if he might</p>	<p style="text-align: right;">Page 60</p> <p>1 problem working for a family-owned 2 company, I guess, to answer your 3 question. 4 Q. Was it a difference working for 5 SYSCO than Alex City Provision in that 6 SYSCO was not a family-owned company? 7 A. I don't know that the ownership 8 made it any different. I mean, you do 9 the same things regardless of who owns 10 it. 11 Q. How did you like working for a 12 more corporate structure? 13 A. I really enjoyed working for 14 SYSCO, so I never looked at them as a 15 corporate structure. 16 Q. Did you tell folks at Merchants 17 Foodservice in your interview that you 18 really didn't like working for a 19 corporate structure and missed the 20 family-owned business at Alex City 21 Provision? 22 A. No, I did not. 23 Q. Have we talked about all of your</p>

15 (Pages 57 to 60)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 61</p> <p>1 jobs up until the time that you went to 2 work at Merchants Foodservice? 3 A. Yes, sir. 4 Q. I'm going to mark as Defendant's 5 Exhibit 1 a notice of deposition. 6 (Defendant's Exhibit No. 1 was 7 marked for identification and 8 is attached.) 9 Q. Have you seen that, Mr. Adams? 10 A. I saw several things that looked 11 like this. But as far as the heading of 12 this, I mean -- 13 Q. And I understand. 14 A. To definitively say I have, I 15 can't because, I mean, Derrick forwarded 16 me everything and I've looked it over, 17 but -- 18 Q. And your attorney gave me 19 discovery responses this morning and had 20 faxed them to me last night that had 21 documents attached to them. Other than 22 those documents, do you have -- and I 23 don't want to know anything that you've</p>	<p style="text-align: right;">Page 63</p> <p>1 keep notes on. Do you have a calendar 2 or anything where you took notes about 3 conversations or things that happened at 4 Merchants Foodservice? 5 A. Not in my possession anymore, 6 no. 7 Q. Okay. Is that something that 8 you gave to your attorney or something 9 that would still be at Merchants 10 Foodservice, or you just don't know? 11 A. It is something that over time 12 as I began to seek legal advice, that I 13 put everything in one wad, so to speak. 14 And as I got it on my computer, what to 15 me was little tears and scrabbles of 16 paper, you know, once I had it in place, 17 that's -- I don't have them anymore. 18 Q. I'm going to mark as Defendant's 19 Exhibit 2 a document that your attorney 20 sent me. Is that something you prepared 21 on your computer, or is that what you're 22 talking about that you put everything 23 together in one spot?</p>
<p style="text-align: right;">Page 62</p> <p>1 given to your attorney or that your 2 attorney's asked you to do. But other 3 than those documents, have you got any 4 other documents that you believe support 5 your claims in this case? 6 A. No, I don't. 7 Q. Other than those documents that 8 your attorney has given me, have you got 9 any other documents related to your 10 employment at Merchants Foodservice? 11 A. Not that I -- if -- something 12 may be stuck in a drawer somewhere, but 13 I don't know that it's privy to this 14 matter. But to the best of my 15 knowledge, no. 16 Q. Have you got any tape 17 recordings -- 18 A. No. 19 Q. -- of conversations? Any videos 20 of anything? 21 A. No. 22 Q. I know a lot of times I've got a 23 calendar that I jot stuff down on and</p>	<p style="text-align: right;">Page 64</p> <p>1 (Defendant's Exhibit No. 2 was 2 marked for identification and 3 is attached.) 4 A. If this is the exact copy of 5 what I gave Derrick, then, yes, it is. 6 Q. Okay. 7 A. I mean, I'm not reading the 8 whole document. But it looks exactly 9 like what I handed him, yes. 10 Q. Okay. And it's my understanding 11 that this is what was on your computer? 12 A. Right. 13 MR. DYKES: Is that -- 14 MR. BLYTHE: It is. 15 MR. DYKES: Okay. 16 Q. (BY MR. DYKES:) So other than 17 what's in here would contain any other 18 writings or notes or anything else that 19 you would have kept, is all going to be 20 right in this document -- 21 A. Exactly. Correct. 22 Q. -- in Defendant's Exhibit 2? 23 Okay. And we'll come back to</p>

16 (Pages 61 to 64)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 65</p> <p>1 this because it -- well, let me ask you 2 this: Does this pretty much summarize 3 your allegations against Merchants 4 Foodservice in terms of what you were 5 told? 6 A. That's it in a nutshell. 7 Q. Okay. I'm going to mark as 8 Defendant's Exhibit 3 a Social Security 9 statement that was provided to me 10 yesterday afternoon. 11 (Defendant's Exhibit No. 3 was 12 marked for identification and 13 is attached.) 14 Q. How do you believe that that 15 supports your claims or is related to 16 the lawsuit? 17 A. I was just -- the interrogatory 18 or ever how you say that, wanted my W-2s 19 or -- that's just pretty much here. 20 Q. Okay. 21 A. What my salary -- I guess just 22 to -- 23 Q. Is that the same information --</p>	<p style="text-align: right;">Page 67</p> <p>1 2006, 2005, 2004, and 2003. 2 (Defendant's Exhibit No. 5 was 3 marked for identification and 4 is attached.) 5 Q. Those were provided in response 6 to our request for W-2 information? 7 A. Correct. 8 Q. Okay. I want to talk now about 9 going to work for Merchants Foodservice. 10 How did that -- walk me through that 11 process. What happened? 12 A. As in? 13 Q. Well, I mean, were you looking 14 for a job at Merchants Foodservice? 15 A. No, I was not. 16 Q. How were you contacted? 17 A. By a company by the name of 18 Freedom Search out of Florida, I 19 believe. 20 Q. Tell me what happened there. 21 A. Just I was sitting at my desk 22 one day and the phone rang and the guy 23 identified -- told me his name, who he</p>
<p style="text-align: right;">Page 66</p> <p>1 and I've got your W-2s and the SYSCO 2 pay. Is that the same reason you gave 3 those because it shows salary 4 information? And you can look at that. 5 A. Well, salary information, yeah. 6 This is just -- you can see that this 7 was for two days' vacation. This was my 8 last check there and this is just -- 9 Q. And I'm going to mark -- not to 10 interrupt, but I'm going to mark as 11 Defendant's Exhibit 4 -- 12 A. Okay. 13 Q. -- an earnings statement from 14 SYSCO, which is what we're talking 15 about. 16 (Defendant's Exhibit No. 4 was 17 marked for identification and 18 is attached.) 19 A. Right. And that shows my bonus 20 being the 10,531.50 rather than -- I 21 said around 10, but -- 22 Q. Okay. And I'm going to mark as 23 Defendant's Exhibit 5 the W-2s from</p>	<p style="text-align: right;">Page 68</p> <p>1 worked for, and that he wanted to know 2 if I'd be interested in going to work 3 for a local food company. And I -- best 4 of my knowledge, my first question was 5 who is it, and he wouldn't tell me who 6 it was. It was just for someone within 7 a 50-mile radius, blah-blah-blah. And, 8 you know, I said, well, what does it 9 pay. And he said, well, they haven't 10 quite determined that. But he said -- I 11 think he said, I'm thinking it's going 12 to be around 60 or 65,000. And I said, 13 well, if it's going to pay that, then I 14 would be interested, you know, in 15 talking to them. And he said, well, 16 he'd get back to me. 17 And he called back a few days 18 later and wanted to know if I was still 19 interested and I said, "Well, what else 20 can you tell me. And he said, "Well, 21 I'd like to set up an interview for 22 you." And I don't -- I think that's 23 when I found out it was Merchants. And,</p>

17 (Pages 65 to 68)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 69</p> <p>1 of course, I had driven by Merchants. I 2 had seen them -- I used to go to a 3 periodontist in Montgomery, so I'd drive 4 right by there from SYSCO to my dentist 5 in Montgomery. And that's when the 6 interview was set up. 7 Q. How long after your 8 conversations was the interview going to 9 be? 10 A. I want to say 10 to 12 days, but 11 that's strictly a guess. I have no 12 clue. 13 Q. Other than this company who 14 called, have you gotten any other calls 15 from somebody asking you to go to 16 another food distributor company? 17 A. No. 18 Q. Who was the interview going to 19 be with? 20 A. It was originally scheduled to 21 be with Hal Henson, Andy Mercier, and 22 Mr. Suber. 23 Q. What was Hal Henson's job title?</p>	<p style="text-align: right;">Page 71</p> <p>1 that day; that he was going to conduct 2 the interview. And, you know, if things 3 went further or they needed to see me, 4 that they would see me at a later date 5 and time. 6 Q. Prior to going to the interview, 7 did you do any research on Merchants 8 Foodservice? 9 A. Looked them up on the Internet, 10 just found out they had been in business 11 for, I think, almost 100 years, that 12 they had started in Mississippi and, you 13 know, from a small up to a top 20 at the 14 time, I think, distributor in the United 15 States. 16 Q. Okay. 17 A. Just some background stuff. 18 Q. Did you know anybody who had 19 worked there? 20 A. No, I did not. 21 Q. So tell me what happened after 22 Hal told you that Andy and Don weren't 23 going to be there.</p>
<p style="text-align: right;">Page 70</p> <p>1 A. Either general manager or branch 2 manager. 3 Q. And what was your understanding 4 of Andy's? 5 A. At the time, Andy was the vice 6 president. 7 Q. Okay. And Don Suber's? 8 A. Was the president of the 9 company. 10 Q. You said the interview was going 11 to be with them. What happened? 12 A. Well, I -- on the day the 13 interview was scheduled, I showed up 14 about 7:45. The interview was supposed 15 to be at 8:00. Hal actually walked out 16 to his car to get something out and, I 17 guess, saw me sitting out there. He 18 walked over there and asked me if I was 19 Steve. I told him, yes, I was. He 20 said, "Well, come on, there's no need to 21 sit out here. Come on inside." So I 22 did. And he told me that Andy and 23 Mr. Suber weren't going to be available</p>	<p style="text-align: right;">Page 72</p> <p>1 A. He said he was going to go on 2 and do the interview and if need be or 3 it progressed far enough, that -- or 4 they needed to see me at some later date 5 and time, then they would arrange that 6 then. 7 Q. Okay. What happened after -- 8 what happened next? 9 A. We did the interview. And do 10 you want specifics on that? 11 Q. Yeah. Tell me what happened in 12 the interview. 13 A. Okay. On his end, you know, he 14 asked general questions as far as 15 background, where I'd worked, where I 16 worked now. You know, he asked me to 17 explain some of the stuff we did at 18 SYSCO, how I handled certain situations. 19 Seems like he may have even had a 20 hypothetical, you know, how would you 21 handle this. And, you know, I explained 22 to him that SYSCO had actually -- and I 23 was a small cog in this wheel and not</p>

18 (Pages 69 to 72)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 73</p> <p>1 anything monstrous or big. But that we 2 had been awarded the Hall of Fame Award, 3 which is top recognition in all of 72, 4 at the time, SYSCO houses. 5 And, you know, I explained to 6 him how we did stuff on day shift and as 7 far as doing letdowns and preparing the 8 warehouse for night shift when they came 9 in. And, you know, he was just amazed 10 at this and seemed impressed because 11 that was not the way they were doing 12 things at Merchants. And, basically, he 13 got -- when we finished that, you know, 14 it got to the part did I have any 15 questions, and I did. 16 Q. In talking about your experience 17 at SYSCO, did you let him know that you 18 weren't in charge of transportation? 19 A. Yes. 20 Q. You let him know that you 21 weren't in charge of nights? 22 A. Yes. 23 Q. What did you tell him about your</p>	<p style="text-align: right;">Page 75</p> <p>1 two-lane road the whole way, so -- 2 Q. All right. Well, let's talk 3 about the questions that you had for 4 Hal. 5 A. Uh-huh. 6 Q. What were those? 7 A. The first one had to deal with 8 just what hours, you know, I would be 9 expected to work and Hal pretty much 10 answered that question with a question. 11 You know, "Well, tell me what you do at 12 SYSCO." And I explained to him that, 13 you know, the crew came at 5:45 -- I 14 mean, I came at 5:45, the crew at 6:00, 15 they normally finished at 2:30, 2:45, 16 and I was out the door shortly 17 thereafter at 3:00. And he was like, 18 that's what I could expect to typically 19 work at Merchants was eight to eight and 20 a half hours a day. 21 Q. Did he tell you you'd never have 22 to work more than that? 23 A. He never told me I would either.</p>
<p style="text-align: right;">Page 74</p> <p>1 experience and ability to do the job as 2 an operations manager? 3 A. I'm not sure I follow you. 4 Q. Well, just in terms of what -- 5 I'm sure he asked you what your 6 background was and why you thought you 7 could be an operations manager for him. 8 A. At Alex City Provision, I had 9 been the operations manager and I had 10 been involved in day shift, night shift, 11 and transportation. From SYSCO's point 12 of view or what I held at SYSCO, I was 13 strictly a day shift supervisor. But I 14 had the background or the experience 15 from Alex City Provision, my previous 16 job with SYSCO, of being an operations 17 manager. 18 Q. Was Merchants Foodservice closer 19 to Alex City? 20 A. Closer mile-wise. Time-wise, it 21 was almost identical because from Alex 22 City to Clanton, 22 is an awful ride. 23 Just -- it's just curvy and hilly and</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. But he did not tell you that you 2 would not work more than eight, eight 3 and a half hours a day? 4 A. He said that would be a typical 5 day, was his answer. 6 Q. Was it your understanding, as 7 operations manager, that if there was a 8 problem that needed to be fixed, you 9 might have to stay longer than that? 10 A. I would think any operations 11 manager or anyone in charge of anything 12 at any given business, if there was a 13 problem, would stay and fix it. 14 Q. Was anything else said about the 15 time that you would be working there? 16 A. As far as hours? 17 Q. As far as hours. 18 A. No. 19 Q. What else do you remember about 20 the interview? 21 A. Well, after the time part was 22 covered, I asked him about night shift 23 work. And he's like, "Well, are you</p>

19 (Pages 73 to 76)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 77

1 opposed to working night shift." And I
 2 told him that on any given regular
 3 basis, that I would be. And then I told
 4 him the reasons why as far as living
 5 like where I live and the commute that's
 6 involved and just it's not like you work
 7 in the food business. You don't work
 8 three eight-hour shifts. You work two
 9 shifts and whatever. But if I was
 10 working nights, my family was home.
 11 When I was home sleeping, they were at
 12 work or school and that, you know, I was
 13 opposed to any regular night shift
 14 schedule or any job that involved any
 15 night shift schedule. And he said, no,
 16 no, nothing like that. He says, "All I
 17 expect you to do would be, you know,
 18 work a couple of shifts or a couple of
 19 nights on the night shift, meet the
 20 guys, meet the staff, and just observe
 21 and see what's going on and see if there
 22 are any improvements that you could
 23 offer that we might want to implement to

Page 78

1 give a try."
 2 **Q. As the operations manager, were**
 3 **you going to be responsible for the**
 4 **night shift?**
 5 **A. I was going to be responsible**
 6 **for everything, yeah.**
 7 **Q. Okay. When you say**
 8 **"everything," what is -- tell me what --**
 9 **A. Day shift, night shift, and**
 10 **transportation.**
 11 **Q. What else do you remember about**
 12 **the interview?**
 13 **A. He told me that -- let me think.**
 14 **I had something and it jumped -- and**
 15 **then something else jumped in. But he**
 16 **assured me that that wasn't the case**
 17 **with the night shift. And I didn't ask**
 18 **about Saturday. He just sort of, as an**
 19 **afterthought, said, "Now, we will need**
 20 **you to work two Saturdays a year." He**
 21 **said, "We do a physical inventory twice**
 22 **a year and that requires working**
 23 **Saturday, you know. But don't worry**

Page 79

1 about that because when you work that
 2 Saturday, you'll receive a day off as
 3 compensation for it."
 4 **Q. Okay. Anything else about**
 5 **Saturday work that you remember during**
 6 **the interview?**
 7 **A. No.**
 8 **Q. Tell me what else you remember.**
 9 **A. After that, I asked him about**
 10 **vacation because I explained to him that**
 11 **at SYSCO right now, I had 12 days. I**
 12 **had two weeks' vacation. And then SYSCO**
 13 **actually gave you two personal days**
 14 **of -- they called them SYSCO day and**
 15 **your birthday. And I explained to him**
 16 **that within a year or in the coming**
 17 **year, I would receive 17 days' vacation.**
 18 **And he said, "Well, Merchants' policy**
 19 **was you worked a year and then you got a**
 20 **week's vacation." And I said, "Well,**
 21 **Hal, I'm not going to give up three**
 22 **weeks' vacation to come to work and work**
 23 **a year before I get a week off." And**

Page 80

1 he's like, no, don't worry about that.
 2 He says, that's what the book says or
 3 what the manual says. He says, "I've
 4 never and wouldn't" -- he says, "I have
 5 never expected any of my managers and I
 6 certainly wouldn't expect you to come to
 7 work and not have any time off for a
 8 year." He said, "You know, after you've
 9 been here and got your feet wet for a
 10 couple of months, I'll be happy to give
 11 you a Thursday and a Friday to go with a
 12 Saturday and Sunday. And then after
 13 that, if you need a day here or a day
 14 there, just ask me." He said, "I'll
 15 give you all the time you want off."
 16 **Q. You said that's what the book**
 17 **says. What book were you referring to?**
 18 **A. The handbook, I'm assuming, is**
 19 **what -- he said -- he said Merchants'**
 20 **policy.**
 21 **Q. Okay.**
 22 **A. And then the book, I'm assuming,**
 23 **is the handbook.**

20 (Pages 77 to 80)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 81</p> <p>1 Q. And you got a copy of the 2 handbook when you started? 3 A. I'm sure I must have. I mean, I 4 signed all sorts of forms. 5 Q. Okay. All right. And we talked 6 about you said Hal told you about 7 vacation. What else do you remember 8 talking about during the interview? 9 A. The last thing I really wanted 10 to -- other than, you know, what the job 11 was going to pay, I asked him about the 12 stability of the work force because I'd 13 worked in -- you know, at Alex City 14 Provision, at times, it wasn't always 15 that smooth. And, you know, we had a 16 rough spot or two at SYSCO. But, you 17 know, I wanted to know that there was at 18 least a secure steady work force in 19 place and he told me they had a great 20 work force. I believe his exact thing 21 was a great day shift, an excellent 22 night shift, and a good core group of 23 drivers, best of my recollection is what</p>	<p style="text-align: right;">Page 83</p> <p>1 been promoted to transportation manager. 2 He said Phillip Stitt was the night 3 manager and a guy by the name of Rodney 4 Ware was the night shift supervisor. 5 And he just raved about how great night 6 shift's numbers were, how Phillip always 7 maxed out on his bonus and stuff like 8 that and he expected me to do the same. 9 But, you know, he just gave me every 10 assurance that they had a great staff 11 and great work force. 12 Q. Did y'all talk about salary or 13 pay during your interview? 14 A. We did. 15 Q. What did you discuss? 16 A. I asked him what the job was 17 going to pay. He said on the low end, 18 possibly 60. On the high end, around 65 19 with an opportunity for a 30 percent 20 bonus, which was going to be paid out 21 three times a year, I guess. So I had 22 the opportunity to earn ten percent of 23 my salary three times a year.</p>
<p style="text-align: right;">Page 82</p> <p>1 he said. 2 Then he actually went to tell me 3 who was in place as far as department 4 heads or managers and he spoke of Randy 5 Harrington. And Randy at the time was 6 the operations manager and he said Randy 7 was a super great guy, that, you know, 8 his forte was more in inventory control 9 more than it was running day shift. But 10 that he expected, you know, the new 11 director of ops would be primarily 12 responsible for the day-to-day of the 13 day shift anyway. That, you know, he 14 was going to let Randy keep the title of 15 operations manager. That's something he 16 didn't want to take away from him, that 17 he thought he'd earned it. But that I'd 18 primarily be running the day shift. 19 He told me Jason Kelly was 20 transportation manager. He said Jason 21 had started with the company as a 22 driver, had worked his way through, and 23 been promoted to supervisor and then had</p>	<p style="text-align: right;">Page 84</p> <p>1 And I remember saying, "Well, 2 you know, I'd certainly like it to be 3 the 65 rather than the 60." And he 4 said, "Well, that would depend a lot on 5 who we select as the candidate and their 6 credentials and Mr. Suber would figure 7 into that." 8 Q. Okay. Anything else you 9 remember about the interview with Hal? 10 A. Pretty much that was the body of 11 what transpired while I was there and 12 then thought the interview was 13 concluded, yeah. 14 Q. Okay. Did y'all talk about 15 having a flexible schedule or anything 16 like that? 17 A. He mentioned that -- but given 18 the position that they were hiring for, 19 that that guy could actually set his own 20 windows, when he worked those eight 21 hours. You know, like if I wanted to 22 come in at 6:00 and work till 2:00, that 23 should be fine or sometime I might want</p>

21 (Pages 81 to 84)

FREEDOM COURT REPORTING

Page 85

1 to sleep in or do whatever, you know,
2 come in at 10:00 and work till 6:00,
3 maybe, you know, just to see the night
4 shift guys on occasion. But he told me
5 I, you know, would definitely have the
6 flexibility of setting my own schedule.

7 **Q. Okay. And it's my understanding**
8 **that you're claiming in that lawsuit**
9 **that Hal Henson told you things during**
10 **that interview that weren't true. Are**
11 **there any other things that you claim**
12 **Hal told you during that interview that**
13 **were not true?**

14 A. I'm not sitting here keeping
15 notes and don't really remember what
16 we've talked about and what we haven't.
17 But I don't recall anything right now.

18 **Q. Okay. Well, I mean, we've**
19 **talked about the hours worked, your**
20 **schedule, vacations, weekends and**
21 **nights, and the work force and --**

22 A. I do remember one other thing
23 now.

Page 87

1 A. Did I?

2 **Q. Are you claiming that wasn't**
3 **true, that he had been let go because**
4 **of --**

5 A. No. No. No. I thought you
6 were asking me if there was anything
7 else that happened during the interview.

8 **Q. I'm just trying to make sure I**
9 **understand everything you're saying that**
10 **Hal -- that you claim Hal told you that**
11 **wasn't accurate.**

12 A. Okay. Yeah. As far as -- from
13 what I hear after I went to work there,
14 that was accurate, so I guess that's not
15 a part of what I'm saying was inaccurate
16 or untrue.

17 **Q. Okay. I'm just trying to make**
18 **sure I have -- you're talking about the**
19 **hours worked, your schedule.**

20 A. Off time.

21 **Q. The off time.**

22 A. And the work force.

23 **Q. And the work force. Okay.**

Page 86

1 **Q. Okay.**

2 A. That I asked what happened to
3 the last director of operations. And
4 Hal hinted that he shouldn't -- you
5 know, that it was something that
6 shouldn't be discussed, but he wanted me
7 to understand that Merchants had been
8 the one to let the guy go and not the
9 guy being dissatisfied or unhappy or
10 anything like that and him resigning,
11 that Merchants had to let him go. And
12 it had to deal with him sending
13 inappropriate e-mails to a female
14 coworker or an employee and --

15 **Q. Okay.**

16 A. Because he did want me to
17 understand that, you know, the guy had
18 been doing a good job and,
19 unfortunately, had just done some
20 things. Merchants had to let him go,
21 that he hadn't resigned.

22 **Q. Did you find out that wasn't**
23 **true? I mean --**

Page 88

1 A. Exactly.

2 **Q. Now, y'all talk about your pay.**

3 A. We did.

4 **Q. Are you claiming that anything**
5 **he told you about your pay was**
6 **inaccurate?**

7 A. As far as the salary that I
8 started at, they actually offered me
9 62-5 to start.

10 **Q. Right.**

11 A. And that's what my salary -- if
12 you divide that into bimonthly
13 incrementals, that's what my check was
14 for.

15 **Q. Okay. And then you got some**
16 **bonuses while you worked there; is that**
17 **right?**

18 A. I got -- I got -- I was there
19 long enough to go through two bonus
20 periods. And the first one, I didn't --
21 I got something that I didn't earn, is
22 the way I understood it. Said I -- I
23 hadn't been there long enough to

22 (Pages 85 to 88)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 89</p> <p>1 qualify, but they were going to give it 2 to me anyway. And then the second time 3 around, I got nothing. 4 Q. Okay. 5 A. And as far as being -- my check 6 was for the amount -- it was supposed to 7 be -- but if you equate that for the 8 hours I was supposed to be working, and 9 I don't know how you want to break that 10 down, I was working more hours, but 11 being paid what I was told I'd be paid 12 to work less hours. So you -- you can 13 figure out if I was paid what I should 14 have been or not, but -- 15 Q. You were told you would get paid 16 \$62,500 a year? 17 A. Correct. 18 Q. And that's what you were getting 19 paid? 20 A. I did get that, correct. 21 Q. And you understood that you were 22 hired as what is called an exempt 23 employee. Did you understand that? And</p>	<p style="text-align: right;">Page 91</p> <p>1 hour, they should be here. And I told 2 him that would be fine. 3 I asked him would he carry me on 4 a warehouse tour, you know, let me meet 5 the guys that were there. And he said 6 that wouldn't be a good idea right now, 7 that they hadn't told any of the staff 8 that they had made the decision to hire 9 a new director of operations and rather 10 than -- thought it would be best just to 11 wait till that announcement had been 12 made before I came out. And at the 13 time, I understood that. 14 And, so, he suggested I run down 15 to the corner and just get a snack or 16 something and kill about 45 minutes and 17 then come back, which is what I did. 18 And at that time, Andy and Mr. Suber 19 joined the interview. 20 Q. At any time did you ask to go 21 back another time to take a tour of the 22 warehouse? 23 A. No.</p>
<p style="text-align: right;">Page 90</p> <p>1 you understood you were going to get the 2 same paycheck each week? 3 A. I knew I was salaried, yeah. 4 Q. So you understood you were going 5 to get the same paycheck each week 6 whether you worked one hour or whether 7 you worked 100 hours? 8 A. The way you posed the question, 9 yeah, I understand that. 10 Q. So we've talked about your 11 interview with Hal. What happened next? 12 A. Hal excused himself from the 13 conference room and closed the door when 14 he left and he came back just a real 15 short time later and he said that Andy 16 and Mr. Suber were able to get away and 17 were on their way and they'd really like 18 to talk to me that day if it was 19 possible. And I told him that, you 20 know, I'd taken a day off from SYSCO, a 21 vacation day, so I really didn't have 22 anything planned. And he said, well, if 23 I could hang around 45 minutes to an</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Why not? 2 A. I just didn't. 3 Q. All right. Tell me what 4 happened when you came back and Andy and 5 Don were there. 6 A. Hal made the introductions and 7 we shook hands. Told them I was glad to 8 meet them. It was a pleasure to meet 9 them. Hal took the floor and briefly 10 filled them in on what had transpired 11 during, I think, as far as my background 12 and work history and stuff like that and 13 just, I guess, open the floor, so to 14 speak, for Mr. Suber and Andy. 15 And best I remember, Mr. Suber 16 was the first one to ask me a question 17 and he wanted to know about my 18 experience with KFC, Kentucky Fried 19 Chicken and the Foodservice contracts or 20 what goes on with handling the KFC 21 account. And he explained that 22 Merchants was in the process of trying 23 to garner that account. And I told him</p>

23 (Pages 89 to 92)

FREEDOM COURT REPORTING

Page 93

1 that at SYSCO, we had had that contract
2 for two years and that from a day shift
3 supervisor standpoint, I was familiar
4 with the warehouse tour that took place,
5 the records you have to keep, you know,
6 as far as on certain items that come in,
7 you have to record the received date,
8 the pack date, the expiration date. You
9 know, there's a lot of record keeping
10 involved in doing it the way they want
11 you to do it.

12 And I explained to him that I
13 was aware of what took place on the day
14 shift. You know, that night shift and
15 transportation-wise, I didn't. But from
16 the day shift point of view, I did, and
17 he was happy to hear that. And he asked
18 me if -- you know, at the time, I really
19 didn't understand why, but the next
20 question he asked me was he wanted my
21 assurance that I was 100 percent
22 anti-union and --

23 Q. What did you tell him?

Page 94

1 A. I told him that at SYSCO, we had
2 always gone out of our way to avoid any
3 union. I mean, SYSCO had union houses.
4 At SYSCO Alabama, we were non-union and
5 that's the way we liked it and I
6 preferred working in that type of
7 atmosphere, the non-union atmosphere.
8 Where actually from a discipline
9 standpoint, the supervisor can go
10 directly through the employee rather
11 than having to go through, you know, a
12 steward or something like that.

13 Q. Okay. What else do you remember
14 about the interview?

15 A. I remember Andy wanting to know
16 or asking me if I was HACCP certified or
17 if I knew about HACCP, which is -- I
18 guess layman's terms is hazard analysis
19 and critical control points. And that
20 has to do with proper procedures in
21 handling of fresh produce or primarily
22 seafood and poultry, but just fresh
23 refrigerated items coming into the

Page 95

1 warehouse.

2 And I told him that I was HACCP
3 certified, that, you know, with SYSCO
4 they required people on day shift to --
5 or in the receiving to be HACCP
6 certified. And I'd gone to Tampa and
7 recently gotten that HACCP
8 certification, but that I wasn't a
9 practicing HACCP coordinator or anything
10 like that.

11 We had a -- we had a guy in
12 inventory control that was -- actually
13 walked the floor on the cold dock that
14 was HACCP certified and it was his
15 responsibility to do everything. I was
16 just more or less certified as a backup.

17 Q. Okay. Anything else?

18 A. You talked earlier about a
19 corporate mandate or something. That
20 was Andy's terminology; not mine. He
21 seemed to think that, for some reason,
22 at SYSCO we're under extremely a lot of
23 pressure. You know, driven by the

Page 96

1 corporate mandate. And I was as candid
2 and honest with him. I said that wasn't
3 the case where I worked. That was not
4 the case at SYSCO. That, you know, we
5 did a great job. We won a lot of
6 awards, but we just had good people in
7 place that cared about their job and
8 with a little direction, they did their
9 job and did it right. That I'd never
10 experienced any pressure put on me to do
11 this or do that or whatever.

12 I made mention to the fact that,
13 you know, it could have been that way in
14 sales. It could have been that way in
15 marketing. You know, I couldn't speak
16 for those departments. I don't work
17 there. But it definitely wasn't that
18 way at SYSCO. I told him I had a great
19 boss in Eddie O'Connor. I enjoyed what
20 I did. I liked working there, but that
21 there wasn't any corporate mandate that
22 dictated how we did business.

23 Q. At least from your --

24 (Pages 93 to 96)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 97</p> <p>1 A. From my --</p> <p>2 Q. -- from your perspective?</p> <p>3 A. Yeah, from my perspective.</p> <p>4 Q. As operations and the day shift</p> <p>5 manager?</p> <p>6 A. I think -- I know Andy and I</p> <p>7 think Mr. Suber both talked about how</p> <p>8 valuable family was to Merchants, you</p> <p>9 know, and how it wouldn't be like</p> <p>10 working at SYSCO. That, you know, they</p> <p>11 were really in tune to the family aspect</p> <p>12 of an employee and that I'd really enjoy</p> <p>13 working there because, you know, of how</p> <p>14 they thought, you know, family oriented</p> <p>15 they were. And, you know, I'm like,</p> <p>16 well, that can only be a good thing, you</p> <p>17 know, so --</p> <p>18 Q. Anything else you remember about</p> <p>19 the interview?</p> <p>20 A. Nothing other than it ended</p> <p>21 with, you know, handshakes and thanking</p> <p>22 them for letting me be there. I</p> <p>23 appreciated the opportunity that they</p>	<p style="text-align: right;">Page 99</p> <p>1 management, transportation management,</p> <p>2 night shift management, you know. And</p> <p>3 for whatever reason, Andy just, point</p> <p>4 blank, told me if they're not who you</p> <p>5 want there, fire them. And I'm like</p> <p>6 okay. And when we'd hang up the -- you</p> <p>7 know, fire them and put somebody in</p> <p>8 there you want or somebody that can do</p> <p>9 the job and when I'd hang the phone up</p> <p>10 with him, that was always the first</p> <p>11 thought that would come to my mind is</p> <p>12 that's really family oriented, you know.</p> <p>13 A man's got four or five, whatever,</p> <p>14 years invested and don't talk to him or</p> <p>15 try to do this, just fire him was the</p> <p>16 answer. So I'm going to say from my</p> <p>17 perspective, that was an untruth in the</p> <p>18 interview that they're family oriented.</p> <p>19 Q. Okay. But to your knowledge --</p> <p>20 you don't know what Andy or Don</p> <p>21 considered to be family oriented?</p> <p>22 A. No, I don't. That's why I tried</p> <p>23 to explain that when I made the</p>
<p style="text-align: right;">Page 98</p> <p>1 were affording me. You know, Hal said</p> <p>2 they had one more guy to interview and</p> <p>3 that they'd be in touch with me in a few</p> <p>4 days.</p> <p>5 Q. Okay.</p> <p>6 A. And that's when I left.</p> <p>7 Q. Is there anything you claim that</p> <p>8 Don or Andy said that was incorrect</p> <p>9 during y'all's interview?</p> <p>10 A. The only thing -- and this,</p> <p>11 again, is from my perspective, okay? I</p> <p>12 guess family oriented to some people</p> <p>13 means one thing and to others, it means</p> <p>14 something else. But that point was</p> <p>15 driven home to me during the course of</p> <p>16 the interview and, trust me, from my</p> <p>17 first day on the job, I knew I had made</p> <p>18 a bad mistake because of what I was</p> <p>19 expecting when I walked in the door and</p> <p>20 what I actually walked in the door to.</p> <p>21 But in several conversations</p> <p>22 that ensued shortly after my employment</p> <p>23 there, it had to do with day shift</p>	<p style="text-align: right;">Page 100</p> <p>1 statement.</p> <p>2 Q. Do you think they were making</p> <p>3 those statements to try to get you to</p> <p>4 come to work there? I mean, is that</p> <p>5 something you're claiming in this</p> <p>6 lawsuit?</p> <p>7 A. That's what I'm claiming, yes.</p> <p>8 That's what I'm asserting, is that</p> <p>9 everything that was contrived in that</p> <p>10 interview was to entice me to come to</p> <p>11 work for them.</p> <p>12 Q. Why do you think they did that?</p> <p>13 A. There again, are you wanting why</p> <p>14 I think they did?</p> <p>15 Q. Yeah.</p> <p>16 A. I think, just from what I saw</p> <p>17 the first day on the job, is that</p> <p>18 warehouse could not have been more</p> <p>19 mismanaged. I've never been in a</p> <p>20 nastier facility. I mean, it was</p> <p>21 downright nasty. The equipment was</p> <p>22 abused and although it was new in age</p> <p>23 year-wise, it looked ancient. I mean,</p>

25 (Pages 97 to 100)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 101</p> <p>1 it just really had been mistreated. And</p> <p>2 I think they wanted someone to come in</p> <p>3 there and snap their fingers, wave a</p> <p>4 magic wand, do whatever, and turn it</p> <p>5 into a warehouse that was running like</p> <p>6 it should have been running instead of</p> <p>7 the mess that it was.</p> <p>8 Q. Well, didn't they tell you in</p> <p>9 the interview they needed a strong</p> <p>10 leader to kind of keep people going in</p> <p>11 the right direction?</p> <p>12 A. To continue what they had going,</p> <p>13 yeah. The way I think Hal put it was</p> <p>14 they had all the right pieces to the</p> <p>15 puzzle in place and just needed the glue</p> <p>16 to hold them there.</p> <p>17 Q. What happened next after the</p> <p>18 interview?</p> <p>19 A. I left and went back home. And</p> <p>20 a couple or three days later, Hal called</p> <p>21 me and said he'd like to make me a job</p> <p>22 offer, but really didn't want to make it</p> <p>23 over the phone. And I told him it would</p>	<p style="text-align: right;">Page 103</p> <p>1 know, I needed time to think about it.</p> <p>2 And he said that I needed to do</p> <p>3 something pretty quick because they were</p> <p>4 ready to make a move and I asked him for</p> <p>5 the weekend. I said, "Well, can I let</p> <p>6 you know something on Monday." He said,</p> <p>7 "Sure, that's fine. But let me know</p> <p>8 about it Monday."</p> <p>9 And Laura and I talked about it</p> <p>10 at length over the weekend and, you</p> <p>11 know, you start putting numbers together</p> <p>12 and potentials, you know, and \$62,000</p> <p>13 salary and 30 percent bonus, you know,</p> <p>14 I'm looking at making 80 grand a year is</p> <p>15 best case scenario. And given what I</p> <p>16 was making at SYSCO, that was an instant</p> <p>17 promotion almost, you know, from day</p> <p>18 shift supervisor to day shift manager or</p> <p>19 somewhere between manager and operations</p> <p>20 manager. And just given what I could do</p> <p>21 for my family with that income, you</p> <p>22 know, and, like I said, it was going</p> <p>23 from day shift supervisor to a director</p>
<p style="text-align: right;">Page 102</p> <p>1 be hard for me to get away from work.</p> <p>2 And he said, well, what if we meet</p> <p>3 halfway and we actually met -- I can't</p> <p>4 remember the little town now that's</p> <p>5 halfway between Calera and Clanton at a</p> <p>6 little Jack's Restaurant there. And I</p> <p>7 asked him if I could bring my wife with</p> <p>8 me, you know, because we were going to</p> <p>9 do it at lunch. And he said, "Yeah,</p> <p>10 that would be fine. I'd love to meet</p> <p>11 her."</p> <p>12 So we actually did and he told</p> <p>13 me the job offer. And, you know, there</p> <p>14 again, even to Laura, the family</p> <p>15 oriented, he's going to love working</p> <p>16 here, you know, he's made the right</p> <p>17 decision. And, you know, he made</p> <p>18 assurances to her that I wouldn't have</p> <p>19 to worry, you know -- she wasn't losing</p> <p>20 me forever, that he was going to give me</p> <p>21 plenty of time off when I needed it.</p> <p>22 So -- and, you know, when he made me the</p> <p>23 job offer, I asked him to think -- you</p>	<p style="text-align: right;">Page 104</p> <p>1 of operations position.</p> <p>2 Q. Which that would be a promotion</p> <p>3 to go from a day shift supervisor to an</p> <p>4 operations manager?</p> <p>5 A. That's the way I viewed it,</p> <p>6 yeah.</p> <p>7 Q. Okay.</p> <p>8 A. But just given financially what</p> <p>9 I could do for my family, we decided to</p> <p>10 do it. It was still the hardest, I</p> <p>11 think, decision I've ever done in my</p> <p>12 life. Just I loved what I did at SYSCO.</p> <p>13 I loved working for SYSCO. I loved my</p> <p>14 employees. They weren't employees to</p> <p>15 me. They were friends and like family.</p> <p>16 I remember the day I left, I actually</p> <p>17 had to leave early. Eddie just told</p> <p>18 me -- he said, "You just go on. You're</p> <p>19 killing yourself here trying to say</p> <p>20 good-bye to them and crying and carrying</p> <p>21 on." And, you know, I just -- that was</p> <p>22 the hardest decision I've ever made in</p> <p>23 my life. And hugging them and crying on</p>

26 (Pages 101 to 104)

FREEDOM COURT REPORTING

Page 105

1 them and them crying with me and missing
2 me and me going to miss them and -- but
3 I could see past that a little ways to
4 what I could do for my family with
5 making this move, so I decided to do it
6 and I did it.

7 **Q. After you left Merchants**
8 **Foodservice, did you try to go back to**
9 **SYSCO?**

10 A. No, I did not.

11 **Q. Why not?**

12 A. I guess a couple or three months
13 into me being with Merchants, SYSCO
14 actually did a fold-out, which is
15 splitting off their existing business in
16 Calera. And I think they gave almost a
17 third of it to the new house they were
18 opening in Geneva. So they had an
19 abundance of management people, forklift
20 guys, receivers, you know, where they
21 were used to doing 200 million a year;
22 all of a sudden, they were going to be
23 down to 115 million a year and --

Page 106

1 **Q. Okay.**

2 A. So, I mean, there just wasn't a
3 place there. And, you know, they tried
4 their best when I turned in my letter of
5 resignation to them to get me not to do
6 it. You know, to get me to rethink it,
7 was I making a wise decision. And, you
8 know, I guess from a pride standpoint,
9 early on, just didn't want to eat crow
10 and even go back and beg for my job
11 back. But, you know, I figured maybe
12 make the best of it, try as hard as I
13 could do and, hopefully, I could turn it
14 around and make it somewhere where I
15 could work, but --

16 **Q. Why did your wife leave SYSCO?**

17 A. She left SYSCO -- and I don't
18 remember the time frames from me leaving
19 Merchants. I don't know if that
20 happened before I left Merchants or
21 after I left Merchants. But she was in
22 a -- her position, she sat on a -- not a
23 pedestal, but right outside in being the

Page 107

1 executive assistant to the president,
2 she was not held in confidence with a
3 lot of -- you know, afraid to go through
4 on up the chain. And Laura's not a real
5 outgoing person anyway. She's sort of a
6 loner and when I wasn't at SYSCO
7 anymore, she lost her lunch partner she
8 had every day.

9 And just eventually the job came
10 open in Alex City that, in essence, was
11 about the same salary she was making at
12 SYSCO without the commute. And she was
13 back home with the kids, you know,
14 could -- we weren't pawning them off on
15 mother anymore to get them to school or
16 anything like that, you know. Laura was
17 back home and could sleep late, could
18 get the kids to school. She'd be there
19 if they had a need to leave school, you
20 know. So she moved back just for a
21 logistical standpoint, especially since
22 I wasn't there anymore, but --

23 **Q. You knew, still, you were going**

Page 108

1 to have a commute going back and forth
2 to Clanton when you took the job at
3 Merchants Foodservice?

4 A. Sure.

5 **Q. Did you get an offer letter from**
6 **them?**

7 A. I did.

8 **Q. I guess first, in the scheme of**
9 **all this, when did you complete an**
10 **application?**

11 A. After they hired me.

12 **Q. Okay.**

13 A. Best I remember.

14 **Q. Okay. I'm going to mark as**
15 **Defendant's Exhibit 6 an application for**
16 **employment.**

17 (Defendant's Exhibit No. 6 was
18 marked for identification and
19 is attached.)

20 **Q. Do you recognize that,**
21 **Mr. Adams?**

22 A. Yeah.

23 **Q. If you'll turn to the last page,**

27 (Pages 105 to 108)

FREEDOM COURT REPORTING

Page 109

1 is that your signature on the
 2 applicant's signature?
 3 A. It is.
 4 Q. And is the date August the 11th,
 5 2004?
 6 A. Looks like it is, yeah.
 7 Q. I'm going to mark as Defendant's
 8 Exhibit 7 what I'm going to describe as
 9 an offer letter, if you'll look at that
 10 as well.
 11 (Defendant's Exhibit No. 7 was
 12 marked for identification and
 13 is attached.)
 14 Q. Is Defendant's Exhibit 7 the
 15 offer letter that you received?
 16 A. It is.
 17 Q. And I'm not trying to trick you.
 18 I'm just trying to figure out the time
 19 order. The application is dated August
 20 the 11th. The offer letter is dated
 21 August 20th and signed August the 23rd.
 22 So do you think you probably
 23 filled the application out before since

Page 110

1 it is dated August the 11th?
 2 A. No. I mean, to the best of my
 3 knowledge, I filled this out my first
 4 day on the job.
 5 Q. Okay.
 6 A. Now, I could have postdated it
 7 at Hal's request, but he says, you know,
 8 this is something we should have already
 9 done. But I did not fill out the
 10 application until I went to work for
 11 Merchants.
 12 Q. Okay. The August 11th, 2004, is
 13 that your handwriting?
 14 A. It is.
 15 Q. And looking at the application,
 16 you're asked do you have any -- this is
 17 on page 2. Do you have any special
 18 circumstances which might prevent you
 19 from working all scheduled work and
 20 overtime, including weekends, and you
 21 checked no; is that right?
 22 A. Uh-huh.
 23 Q. Was there anything that was

Page 111

1 preventing you from working longer hours
 2 than you -- working more than eight
 3 hours a day?
 4 A. Didn't anything prevent me from
 5 working it. I worked every hour they
 6 wanted me to work.
 7 Q. And looking at the offer letter,
 8 I know you just -- you just read through
 9 it. Is there anything in the offer
 10 letter that you claim is not accurate?
 11 A. I mean, that's the offer letter
 12 I received.
 13 Q. Okay. Well, you received the
 14 offer letter and we talked about your
 15 pay was \$62,500.
 16 A. Uh-huh.
 17 Q. And that's accurate, right?
 18 A. Yeah.
 19 Q. Okay. You were eligible for a
 20 30 percent bonus. Do you dispute that
 21 you were eligible for a 30 percent
 22 bonus?
 23 A. No, I don't.

Page 112

1 Q. It says the company has a
 2 benefits program. Did you receive the
 3 information on the benefits program?
 4 A. I did.
 5 Q. Does this offer letter say
 6 anything about the hours that you were
 7 going to be working?
 8 A. The offer letter doesn't, no.
 9 Q. Does the offer letter say
 10 anything about whether or not you'd have
 11 to work nights?
 12 A. The offer letter doesn't.
 13 Q. Does the offer letter say
 14 anything other than in terms of vacation
 15 that you would be -- other than you'd be
 16 provided the usual holidays, including
 17 vacation days?
 18 A. No, it doesn't. Can I add one
 19 other point to that, though? I didn't
 20 make my determination to take this job
 21 on this offer letter. I made it based
 22 on the interview. So if I can say that,
 23 then we'll go on.

28 (Pages 109 to 112)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 113</p> <p>1 Q. Okay. And this doesn't say 2 anything about anything -- you can 3 strike that. 4 I'm going to mark -- do you 5 remember, did you receive the offer 6 letter before you sent in your 7 resignation to SYSCO? 8 A. I'm sure I did. I wouldn't have 9 resigned before I knew I had a job. 10 Q. I'm going to mark -- these are 11 some of the documents that you produced 12 that I got yesterday -- as Defendant's 13 Exhibit 8. 14 (Defendant's Exhibit No. 8 was 15 marked for identification and 16 is attached.) 17 Q. Is that your resignation and 18 exit interview from SYSCO? 19 A. It is. 20 Q. The resignation letter is marked 21 August the 23rd of 2004; is that right? 22 A. Uh-huh. 23 Q. And you signed the acceptance</p>	<p style="text-align: right;">Page 115</p> <p>1 Did you ask him why he didn't 2 say anything in here about working 3 nights or Saturdays? 4 A. No, I didn't. 5 Q. Paragraph 2 of this offer letter 6 reads, "Our incentive program recognizes 7 the personal sacrifice and commitment 8 involved in providing leadership and the 9 necessary supervision to improve on 10 current standards." Did you ask him 11 what was meant by that? 12 A. No, I did not. 13 Q. From this offer letter, did you 14 understand that to receive a bonus, that 15 sales would need to improve and 16 operational and productivity standards 17 would need to improve? 18 A. That was not my understanding. 19 Q. Well, it says you'll be eligible 20 for up to a 30 percent bonus based on 21 improving sales and improving current 22 operational and productivity standards. 23 What was your understanding of that?</p>
<p style="text-align: right;">Page 114</p> <p>1 letter to Merchants Foodservice on 2 August 23rd, 2004; is that right? 3 A. Where is that? 4 Q. On the second page. It's got 5 your name and the date. 6 A. Correct. Best I remember, I 7 signed this at lunch and then when I 8 came back, having made my decision, is 9 when I actually sat down and hand wrote 10 the letter of resignation after I signed 11 the offer with Hal at lunch. 12 Q. Okay. Did you ask Hal why there 13 was no mention in the offer letter about 14 the hours you were going to be working? 15 A. I've never seen that in an offer 16 letter. 17 Q. Well, I'm just asking, did you 18 ask him? 19 A. No, I did not. 20 Q. Did you ask him why he didn't 21 put in here -- 22 A. No, I did not. 23 Q. -- anything about your vacation?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. What Hal told me during the 2 process was that -- and I don't remember 3 the guy's name who I replaced. But he 4 told me, when he was explaining the 5 salary and bonus offer, that the former 6 individual that had been running things 7 routinely made 18 to 20 percent of his 8 bonus on a regular basis. So he led me 9 to believe that that's what I could 10 expect to make going in. 11 Q. Do you know -- 12 A. He didn't mention anything about 13 improving it. That was just status quo. 14 Walk in the door and that's what I could 15 expect. 16 Q. Do you know what the numbers 17 were for the operations manager before 18 you got there? 19 A. I do not. 20 Q. So you don't know if his numbers 21 were better than yours? 22 A. I don't. 23 Q. I'm going to mark as Defendant's</p>

- 29 (Pages 113 to 116)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 117</p> <p>1 Exhibit 10 [sic] a memo to new employees 2 regarding -- from Merchants Foodservice 3 regarding benefits. 4 MR. BLYTHE: You marked that as 5 9. 6 MR. DYKES: Yeah. I think it is 7 supposed to be 9. 9 is the benefits 8 memo. 9 Q. (BY MR. DYKES:) Do you remember 10 receiving this benefits memo from 11 Merchants Foodservice? 12 (Defendant's Exhibit No. 9 was 13 marked for identification and 14 is attached.) 15 A. I do not remember receiving it, 16 but I'm sure I did just as part of their 17 package, I mean -- but I don't recall 18 this particular document. 19 Q. Okay. And I realize you haven't 20 signed it. I was just -- and I -- your 21 letter refers to a benefits program and 22 this seems to be the benefits memo that 23 explains what benefits you would be</p>	<p style="text-align: right;">Page 119</p> <p>1 A. Right. 2 Q. And that would be what their 3 vacation would be? 4 A. Right. 5 Q. Were these the holidays that 6 y'all received? 7 A. To the best of my recollection, 8 yes. 9 Q. I mean, were you eligible for 10 life insurance and the other benefits 11 that it indicates in here that you would 12 have been eligible for? 13 A. Without reading and seeing what 14 they are, I don't know. I know I 15 applied for short term and long-term 16 disability, I believe, but -- and I had 17 my health insurance with them. Some of 18 the stuff, I wasn't interested in. But, 19 yeah, I participated in some of these, 20 yes. 21 Q. Okay. 22 MR. DYKES: What time is it? Do 23 you know?</p>
<p style="text-align: right;">Page 118</p> <p>1 entitled to. Would you agree with that? 2 A. This is their benefits plan, 3 yes. And what each employee, according 4 to this, will receive. 5 Q. Okay. And we've talked about 6 what you say Hal Henson told you about 7 vacation. 8 A. Uh-huh. 9 Q. But is this your understanding 10 of what the vacation was for other -- 11 for employees when they were hired? 12 A. It was my understanding this is 13 what an hourly employee would receive. 14 According to Hal, any new manager he 15 hired would not be expected to work a 16 year without any time off. 17 Q. And I understand that's what you 18 are saying that Hal told you. 19 A. Yeah. 20 Q. This is your understanding of 21 what a new employee -- if they weren't 22 told anything beforehand, this is what 23 they would receive?</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. BLYTHE: 12:30. 2 MR. DYKES: Do y'all want to 3 take a quick break for lunch? 4 MR. BLYTHE: Are you going to 5 go? 6 MR. DYKES: I've still got a 7 decent amount to do. 8 MR. BLYTHE: Yeah, that's fine. 9 MR. DYKES: Okay. Now is a fine 10 time with me to take a break, if you 11 want to do that. Maybe come back in 45 12 minutes or something, or an hour. It 13 doesn't matter to me. 14 MR. BLYTHE: Why don't we take 15 an hour if we're going to do it because 16 I have to find somewhere to eat. 17 MR. DYKES: Okay. 18 (A break was taken.) 19 Q. (BY MR. DYKES:) Mr. Adams, we 20 were talking about your interview and 21 the process of getting hired on there at 22 Merchants Foodservice and we had talked 23 some about your salary and the bonus</p>

30 (Pages 117 to 120)

FREEDOM COURT REPORTING

Page 121

1 structure. I am going to mark as
2 Defendant's Exhibit 10 the incentive
3 program for Steve Adams dated October 1,
4 2004 through September 30th, 2005. Do
5 you recognize that?

6 (Defendant's Exhibit No. 10 was
7 marked for identification and
8 is attached.)

9 A. I do, yes.

10 Q. Looking at the first page, does
11 this represent the potential for a 30
12 percent -- for a bonus for 30 percent
13 of -- 30 percent of your salary over the
14 course of a year, that potential?

15 A. Unless I'm adding wrong, looks
16 like nine, but --

17 Q. Well, if we got -- let's look at
18 it together. Because I've got one, two,
19 three, four, five, six, seven, eight,
20 nine, ten.

21 A. Okay. I missed one of the ones
22 from the indentation there, I think.

23 Q. Okay.

Page 123

1 the prorated part or whatever. But,
2 yeah.

3 Q. Okay. So you don't dispute that
4 you received it?

5 A. No, I don't. Not at all.

6 Q. Then looking for period one
7 2005, it looks like a 2,606.35 bonus for
8 period one of 2005. Does that sound
9 accurate to you?

10 A. I don't remember ever receiving
11 anything other than the first one. Now,
12 I could be wrong, but --

13 MR. DYKES: Okay. Let's see.

14 If you'll give me one second, I'm going
15 to go print off a couple of things.

16 MR. BLYTHE: Sure.

17 (A break was taken.)

18 Q. (BY MR. DYKES:) I'm going to
19 mark as Defendant's Exhibit 11 an
20 employee check history.

21 (Defendant's Exhibit No. 11 was
22 marked for identification and
23 is attached.)

Page 122

1 A. Okay.

2 Q. Would that be potential for ten
3 percent --

4 A. Right.

5 Q. -- three times a year?

6 A. Right.

7 Q. Is that right?

8 A. Uh-huh.

9 Q. Okay. And that's what you were
10 told during your interview process that
11 you would be eligible for?

12 A. Correct.

13 Q. Then if we look at the second
14 page, it looks like for period three of
15 '04, that you received \$734.78. That
16 was prorated for the one month you would
17 have worked in that period; is that
18 accurate?

19 A. I don't remember the specifics,
20 but I do remember receiving one the
21 first time it rolled around. I remember
22 it seems like Hal said I shouldn't have
23 been eligible, but -- and that may be

Page 124

1 Q. I'll represent this is a payment
2 history for your employment --

3 A. Okay.

4 Q. -- with Merchants Foodservice.
5 If you'll look for February 25th, 2005;
6 that shows a check for 2,606.34.

7 A. Uh-huh.

8 Q. Would that match the bonus for
9 period one, 2005?

10 A. Uh-huh.

11 Q. Okay. And do you just not
12 remember receiving the check or do you
13 say that you -- are you claiming you
14 didn't get a bonus check?

15 A. I'm not claiming I didn't get
16 it.

17 Q. Okay.

18 A. I'm saying I don't remember
19 getting it. I remember getting the
20 first one.

21 Q. Okay.

22 A. And I was thinking that's all I
23 got. I'm not saying I didn't get it.

31 (Pages 121 to 124)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 125</p> <p>1 I'm saying I don't remember it. And to 2 the best of my recollection, I got the 3 first one. 4 Q. Okay. 5 A. Can I ask you a question? 6 Q. Yes. 7 A. On this period two, 2005, what 8 dates are these through? 9 Q. Period two goes through May 31 10 of '05. 11 A. May 31 of '05. 12 MR. DYKES: Isn't that -- is 13 that right? 14 MR. BLYTHE: It would be 15 February 1 through May 31. 16 A. I don't understand the -- what 17 I'm seeing on this -- the third page, 18 period two, and I guess I'm asking the 19 question -- maybe this is not my place, 20 but my numbers look better in period two 21 than they do in period three. And I see 22 percent bonus -- 109 percent of my bonus 23 equals zero and bonus percentage from</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. Okay. 2 A. But other than that, I concur 3 with what you are saying. 4 Q. And then in terms of your -- of 5 your pay -- pay every two weeks, I'm 6 going to mark as Defendant's Exhibit 12 7 a document that I received yesterday, 8 which are two paychecks. Do you 9 recognize those? 10 (Defendant's Exhibit No. 12 was 11 marked for identification and 12 is attached.) 13 A. I do. 14 Q. Okay. And those show your 15 pay -- you received the same pay every 16 two weeks of -- 17 A. Correct. 18 Q. -- of 26 -- well, 2,604.17? 19 A. Uh-huh. 20 Q. Okay. After you started working 21 for Merchants Foodservice, did you 22 receive an acknowledgment of employment 23 status from them?</p>
<p style="text-align: right;">Page 126</p> <p>1 period one, 104 was worth 2,606. I 2 mean, I know you are not here to explain 3 things to me, but I don't understand 4 that part of it, but -- 5 Q. For period two, 2005, it's your 6 understanding you didn't get a bonus 7 that period? 8 A. To the best of my recollection, 9 I only received the one. I'm not saying 10 that's all I received. But I'm saying 11 that's all I remember receiving. 12 Q. Okay. 13 A. But I remember one where I 14 didn't get anything. Now, basically, I 15 don't remember a third period, so it 16 very well could be this one. I remember 17 one I got and I remember one I was told 18 I didn't get anything. I guess what I'm 19 not understanding is, if my bonus number 20 or percentage should have been 109.9, I 21 don't see how that equates to zero when 22 104.25 on the bonus percentage equates 23 to 2,606.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Which is? 2 Q. I'm going to mark as Defendant's 3 Exhibit 13 the Merchants Foodservice 4 acknowledgment of employment status. 5 (Defendant's Exhibit No. 13 was 6 marked for identification and 7 is attached.) 8 Q. Do you recognize that, 9 Mr. Adams? 10 A. Uh-huh. 11 Q. Did you read that before signing 12 it? 13 A. Yes. I mean -- 14 Q. Is that your signature at the 15 bottom? 16 A. It is my signature. 17 Q. And that's dated August 24th, 18 2004? 19 A. Correct. 20 Q. Did you read this before signing 21 it? 22 A. I did. 23 Q. The last paragraph of -- the</p>

32 (Pages 125 to 128)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 129</p> <p>1 last sentence of paragraph 1 provides, 2 "In addition, I understand that 3 Merchants Foodservice retains the right 4 to alter, revise, change, or eliminate 5 any of its policies, practices, or rules 6 and any of its pay or benefits at its 7 discretion at any time without 8 necessarily giving me or any other 9 employee advance or actual notice." Did 10 you understand that — 11 A. I do. 12 Q. -- when you signed that? 13 A. Yes. 14 Q. Did you ask any questions of 15 anybody about this? 16 A. I did not. I guess -- this was 17 all filled out after I was hired, 18 though; not prior. Just for your 19 information, if -- you know, I didn't 20 fill all this out as a prerequisite to 21 being employed there. I was already an 22 employee when I filled all of this 23 paperwork out.</p>	<p style="text-align: right;">Page 131</p> <p>1 2004 on it. But — 2 Q. And I'm going to ask you a 3 question in a minute. But is that your 4 signature there on the one that's got 5 8/1/02 on the bottom? 6 A. On — 7 Q. Of employee's signature. 8 Looking at Defendant's Exhibit 14? 9 A. Yeah, this is my signature. 10 Yes. 11 Q. Okay. And I want to mark as 12 Defendant's Exhibit 16 an acknowledgment 13 of having received an employee handbook 14 dated 1/27/05. Do you recognize 15 Defendant's Exhibit 16? 16 (Defendant's Exhibit No. 16 was 17 marked for identification and 18 is attached.) 19 A. I do. 20 Q. Is that your signature on there? 21 A. It is. 22 Q. I'm going to mark as Defendant's 23 Exhibit 17 an employee handbook dated</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. I'm going to mark as Defendant's 2 Exhibit 14 an acknowledgment of having 3 received the Merchants company handbook 4 dated -- with an 8/1/02 date at the 5 bottom. Do you recognize that, 6 Mr. Adams? 7 (Defendant's Exhibit No. 14 was 8 marked for identification and 9 is attached.) 10 A. I do. 11 Q. And this shows, for a handbook 12 dated 8/1/02, an acknowledgment of 13 receipt that I'm going to mark as 14 Defendant's Exhibit 15, an employee 15 handbook dated 8/1/2002. Do you 16 recognize Defendant's Exhibit 15? 17 (Defendant's Exhibit No. 15 was 18 marked for identification and 19 is attached.) 20 A. It's dated August 1, 2002. I'm 21 assuming -- I thought they updated this 22 every year, so I'm assuming I was 23 probably given one that probably had</p>	<p style="text-align: right;">Page 132</p> <p>1 January 1, 2005. Do you recognize that? 2 (Defendant's Exhibit No. 17 was 3 marked for identification and 4 is attached.) 5 A. I do. 6 Q. If you will, look for the 7 employee handbook dated January 1, 2005. 8 It has an acknowledgment form with it 9 that has the January 1, 2005 date that 10 you signed on January 27th, 2005. This 11 is Defendant's Exhibits 16 and 17. 12 A. Uh-huh. 13 Q. Would you agree that the 14 Defendant's Exhibit 15, which has the 15 8/1/02 date on it, matches up with the 16 employee handbook that has -- that's 17 Defendant's Exhibit 15 that has 8/1/02 18 on it? Let me start over. I may just 19 start that whole question over again. 20 Defendant's Exhibit 14 has an 21 8/1/02 date at the bottom of it; would 22 you agree? 23 A. Yeah. I mean, that's what's</p>

33 (Pages 129 to 132)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 133

1 there, yeah.
 2 Q. And the employee handbook has
 3 the date of 8/1/02 on it?
 4 A. Okay.
 5 Q. Would you agree with that?
 6 A. I'm looking at it, yeah.
 7 Q. Okay. So by signing the
 8 acknowledgment from the employee
 9 handbook dated 8/1/02, would you agree
 10 that you received -- that this is the
 11 employee handbook that you received, the
 12 one dated 8/1/02? I'm not trying to
 13 trick you.
 14 A. Yeah. Yeah. I mean, and -- I
 15 received a handbook on two different
 16 occasions. You know, this has got
 17 8/1/02 and that has got 8/1/02. So I'm
 18 good to go with that.
 19 Q. Okay. Looking at Defendant's
 20 Exhibit 15, which is the 8/1/02
 21 handbook, would you have looked through
 22 the handbook when you got it?
 23 A. I'm sure I may have gazed

Page 134

1 through it. I'm sure I didn't read it
 2 verbatim from start to finish.
 3 Q. When you started working for
 4 Merchants, who was the president of the
 5 company?
 6 A. When I started for Merchants?
 7 Q. Uh-huh.
 8 A. Don Suber.
 9 Q. Did you ever receive anything in
 10 writing from Don Suber regarding your
 11 employment?
 12 A. No.
 13 Q. Okay. Did you receive anything
 14 from Don about the hours that you were
 15 going to work?
 16 A. No.
 17 Q. Did you receive anything in
 18 writing from Don about your vacation or
 19 night work?
 20 A. No.
 21 Q. Did you receive anything from
 22 Don about the work force and the
 23 stability of the work force?

Page 135

1 A. No.
 2 Q. Turn to page 5 of Defendant's
 3 Exhibit 15, which is the 8/1/02
 4 handbook. The vacation benefits, are
 5 those the vacation benefits that are
 6 described in the benefits package that
 7 we looked at earlier?
 8 A. Benefits package --
 9 Q. The benefits memo that we looked
 10 at earlier --
 11 A. Yeah. Yeah. Yeah.
 12 Q. -- which is Defendant's
 13 Exhibit 9.
 14 A. Yes.
 15 Q. I'm looking at Bates No. 17,
 16 which is the employee handbook -- or
 17 looking at Exhibit No. 17, which is an
 18 employee handbook dated January 1, 2005.
 19 Would you have looked at this handbook
 20 when you received it?
 21 A. Probably not, other than just
 22 the fact that I got it and knew it was a
 23 handbook. And, there again, I may have

Page 136

1 scanned it to see if there were anything
 2 different from the prior handbook. But
 3 as far as reading it cover to cover,
 4 word for word, no.
 5 Q. If you look at page 4 for
 6 employment status category, would you
 7 agree that you would be categorized as
 8 an exempt employee -- as a salaried
 9 employee who is not subject to the
 10 overtime provisions of the Fair Labor
 11 Standards Act?
 12 MR. BLYTHE: What page you on?
 13 MR. DYKES: Page 4.
 14 THE WITNESS: 4.
 15 A. Yes, I would.
 16 Q. (BY MR. DYKES:) I think I'm
 17 done with the handbook, so no more
 18 confusing exhibits.
 19 So we've gotten up to the time
 20 that you were hired and you signed the
 21 policies and have gone in and are
 22 starting as an operations manager. As
 23 an operations -- as the operations

34 (Pages 133 to 136)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 137</p> <p>1 manager at Merchants Foodservice, just 2 tell me what you did. 3 A. As far as? 4 Q. What were your job duties? 5 A. Just the day-to-day operation of 6 the inbound freight on day shift, the 7 selection process and shipping at night 8 and the transportation or the delivery 9 process the following morning. 10 Q. And who did you report to? 11 A. Hal Henson would have been my 12 direct report. 13 Q. What was his job title? 14 A. There again, I'm thinking it was 15 branch manager, but it could have been 16 general manager. 17 Q. Do you know how long Hal had 18 been with Merchants Foodservice when he 19 started? 20 A. To the best of my recollection, 21 approximately two years. But that's a 22 guess. That's -- 23 Q. Who would have been the other</p>	<p style="text-align: right;">Page 139</p> <p>1 when you left? 2 A. He was. 3 Q. Jason Kelly, how long had he 4 been with the company? 5 A. About the same length of time I 6 think in -- that's employment with the 7 company as a driver, supervisor, and 8 manager. 9 Q. Do you know how long he had been 10 transportation manager? 11 A. He was named that during my 12 predecessor's tenure. So to be honest 13 with you, I'm going to say less than two 14 years. 15 Q. Well, how long had that facility 16 been in Clanton? 17 A. We built the facility in -- 18 SYSCO in Calera, I went to work for them 19 in '98. We started shipping groceries. 20 It was under construction and then 21 completed in January of '99. Clanton 22 Merchants was, best of my 23 recollection -- like I said, I wasn't up</p>
<p style="text-align: right;">Page 138</p> <p>1 managers that you would have worked -- 2 that would have been under you as -- who 3 would have been the managers under you 4 as operations manager? 5 A. Would have been Randy Harrington 6 on day shift, Jason Kelly in 7 transportation, and Phillip Stitt was 8 the night manager. 9 Q. Was Rodney Ware a supervisor? 10 A. Supervisor, yeah. I thought you 11 asked for managers. 12 Q. I did. I did. 13 A. Okay. 14 Q. Who were your other supervisors? 15 A. Seneca Kinsey on day shift and 16 Rodney Ware on nights. 17 Q. How long had Randy Harrington 18 been with the company? 19 A. Here again, I'm pulling from -- 20 Q. Just to the best of your 21 knowledge. I mean -- 22 A. Four years. 23 Q. Was Randy still working there</p>	<p style="text-align: right;">Page 140</p> <p>1 and down that road a lot -- that 2 facility broke ground after we were up 3 and operating in '99. 4 Q. Okay. 5 A. So it was a newer facility than 6 the -- and had been there less time at 7 that location than the one -- the SYSCO 8 place in Calera. 9 Q. Was Jason Kelly still working 10 there when your employment with 11 Merchants -- 12 A. He was. 13 Q. How long had Phillip Stitt been 14 with the company when you started? 15 A. There again, you're -- three 16 years, four years. I think Phillip 17 actually may have been there longer than 18 that. I think he actually worked -- 19 they had a place in Montgomery, I 20 believe, that he worked at before he 21 came. So Phillip probably had more time 22 than either Jason or Randy, but -- 23 Q. Was Phillip still working there</p>

35 (Pages 137 to 140)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 141</p> <p>1 when your employment ended?</p> <p>2 A. No, he was not.</p> <p>3 Q. Why not?</p> <p>4 A. He was on the verge of being</p> <p>5 fired for absenteeism when he resigned.</p> <p>6 Q. Were you going to fire him for</p> <p>7 absenteeism?</p> <p>8 A. Yes.</p> <p>9 Q. How long had he been there when</p> <p>10 this happened -- when he resigned?</p> <p>11 A. I want to say seven to eight</p> <p>12 months.</p> <p>13 Q. How about Rodney Ware, how long</p> <p>14 had he been at the company when you</p> <p>15 started?</p> <p>16 A. Rodney, I don't know. A couple</p> <p>17 of years, I'm guessing. He was a</p> <p>18 selector that they had moved up to</p> <p>19 supervisor.</p> <p>20 Q. Was Rodney still there when you</p> <p>21 left?</p> <p>22 A. No, he was not.</p> <p>23 Q. What happened to him?</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Was he still there when you</p> <p>2 left?</p> <p>3 A. He was.</p> <p>4 Q. When you started at Merchants</p> <p>5 Foodservice, what hours were you</p> <p>6 working?</p> <p>7 A. I started out going in at 7:30</p> <p>8 and getting off at 4:30.</p> <p>9 Q. How long did you do that?</p> <p>10 A. Extremely short period of time.</p> <p>11 I can't give you a time frame, but it</p> <p>12 was extremely short.</p> <p>13 Q. Why did your hours change?</p> <p>14 A. Just I was told that I needed to</p> <p>15 be there longer.</p> <p>16 Q. Who told you that?</p> <p>17 A. Hal did.</p> <p>18 Q. Did he tell you why?</p> <p>19 A. Just from day one when I -- like</p> <p>20 I said when I went to work there, just</p> <p>21 everything about that place was a mess;</p> <p>22 day shift, night shift, transportation,</p> <p>23 shorthanded. Just -- there was just no</p>
<p style="text-align: right;">Page 142</p> <p>1 A. He was fired for sexual</p> <p>2 discrimination.</p> <p>3 Q. When did that happen?</p> <p>4 A. The incidence that he was fired</p> <p>5 for happened -- I don't remember his</p> <p>6 termination date. But when it came to</p> <p>7 my -- it was less than a week after I</p> <p>8 found out about it, was when he was</p> <p>9 fired.</p> <p>10 Q. Okay. Was it around the same</p> <p>11 time that Phillip Stitt left, or was it</p> <p>12 before?</p> <p>13 A. No. It was a couple of</p> <p>14 months -- I'm thinking it was a couple</p> <p>15 of months before Phillip.</p> <p>16 Q. Is it Seneca?</p> <p>17 A. Seneca.</p> <p>18 Q. Kinsey?</p> <p>19 A. Uh-huh.</p> <p>20 Q. How long had he been with</p> <p>21 Merchants?</p> <p>22 A. I want to say Seneca had been</p> <p>23 there a couple of years.</p>	<p style="text-align: right;">Page 144</p> <p>1 way to do what needed doing in an</p> <p>2 eight-hour period. And, I mean, just</p> <p>3 after a short indoctrination, that's</p> <p>4 what he told me to do, you know. And</p> <p>5 it -- he didn't look at what time I came</p> <p>6 to work, which was always before him.</p> <p>7 He looked at what time I left, which if</p> <p>8 it was before him, he always had</p> <p>9 something to say to me. And, I mean,</p> <p>10 somebody doesn't have to say something</p> <p>11 to you -- you know, even on a day where</p> <p>12 we actually had a good day and things</p> <p>13 went smooth, if I walked by his office</p> <p>14 and he was still sitting in his office</p> <p>15 before 5:00, he'd say, "You leaving</p> <p>16 already." And, I mean, you get the</p> <p>17 message. You understand that, you know,</p> <p>18 you need to stay here longer.</p> <p>19 Q. Could you have come in later?</p> <p>20 A. Could I have?</p> <p>21 Q. Yeah.</p> <p>22 A. No.</p> <p>23 Q. Why not?</p>

36 (Pages 141 to 144)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 145

1 A. Because what we were doing at
2 that time as far as trying to get the
3 employees to be there on time and not
4 come in when they wanted to be, Seneca
5 had to start part of the day shift and
6 we had other things that I needed to do
7 just with the assisting the day shift
8 starting.

9 Q. Did you ever call Don Suber and
10 talk to him about the hours you were
11 working?

12 A. No, I did not.

13 Q. Did you call Andy about the
14 hours you were working?

15 A. No, I did not.

16 Q. As operations manager, were you
17 responsible for making sure the
18 operations worked smoothly?

19 A. I was.

20 Q. From what you found when you got
21 there, did you think you were going to
22 be able to get things to work smoothly?

23 A. I don't understand what you're

Page 147

1 hour less. So my employees, they didn't
2 care whether they came to work. They
3 didn't -- you know, if they missed work,
4 there were no repercussions. My hands
5 were pretty much tied where I couldn't
6 discipline them. And, you know, if they
7 lost their job, they could go to work
8 and a lot of them did. You go by
9 Hardee's sometime early in the morning
10 and get a biscuit and I'd see one of my
11 ex-employees working in the Hardee's
12 drive-through window.

13 Q. I don't know why you said your
14 hands were tied in terms of discipline.
15 Why couldn't you discipline anybody?

16 A. Because the shift -- the
17 turnover rate, we worked so shorthanded,
18 that I actually did, during the course
19 of my short tenure there, terminated two
20 or three employees and we had some
21 repercussions on night shift with some
22 trucks leaving later than we thought
23 they should have. And I was, point

Page 146

1 saying. I -- at some point in time, I
2 hoped I would, yes. Just because I -- I
3 had no other choice. I had given up
4 what I had at SYSCO to go to work there.
5 I mean, my alternative was make this
6 work or do something else.

7 Q. Did you think you were qualified
8 to get things turned around with what
9 you found?

10 A. I think I was -- had I been
11 given what I needed to turn it around, I
12 would have been qualified, yes. I don't
13 think anybody, given what I had to work
14 with, was qualified to turn it around.

15 Q. What do you think you should
16 have been given?

17 A. Well, Andy and I talked on
18 numerous occasions about what we paid
19 our employees and it was a minimal
20 amount, I mean, they could make at
21 McDonald's what our forklift guys were
22 making. And compared to what we paid at
23 SYSCO, it was five or six dollars an

Page 148

1 blank, told not to fire anybody else. I
2 could not fire anybody else.

3 Q. Who told you that?

4 A. Hal did. But I'm wanting to
5 think that Andy was -- I don't remember.
6 I had several conversations with Andy
7 about the way things were running and
8 not running. But I was, point blank,
9 told by Hal, I know, that just -- I
10 needed to just work given the
11 constraints I had, that we couldn't
12 afford to lose anymore people because we
13 just were running now.

14 Q. Now, I thought you testified
15 earlier that Andy had told you to fire
16 several managers if they weren't doing
17 they jobs. Is that --

18 A. He did. That was at an earlier
19 point in time.

20 Q. Okay.

21 A. That was early on. That was --
22 that was two to three months into the --
23 into it. I mean, like I said, from day

37 (Pages 145 to 148)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 149</p> <p>1 one, it was screwed up and Andy would 2 call and question something about 3 transportation, you know. Why this 4 wasn't happening or why we were having 5 trouble hiring divers or why we were 6 losing drivers or something like that. 7 And if I ever indicated that it might be 8 something to do with Jason or -- and 9 this is the same way with Phillip or 10 Randy, he'd say, "Well, fire their ass 11 and get whoever you want. Get you 12 somebody in there that can do the job." 13 Q. As the operations manager, 14 wasn't it your responsibility to find 15 managers who could do the work? 16 A. Well, I thought coming in what I 17 was told that I had managers in place 18 that could do the job. I mean, just 19 like I can't fire -- I mean, I can't be 20 there 24 hours a day. We actually did 21 start searching for a night warehouse 22 manager when we made the determination 23 to fire Phillip and then he quit and</p>	<p style="text-align: right;">Page 151</p> <p>1 errors we were having. 2 Q. Was this before or after Phillip 3 stiff quit? 4 A. Before -- before he quit, I 5 worked probably four or five weeks. 6 When Phillip quit, I actually had to 7 start working nights, you know, because 8 I had no manager to work night shift. 9 Randy and I -- Randy actually worked a 10 few weeks at night. He and I would 11 alternate where I wasn't continually on 12 night shift. But throughout the course 13 of the ten and a half months, I worked 14 ten weeks on night shift. 15 Q. Without a night manager, as 16 operations manager, were your -- I mean, 17 was it expected that you would be the 18 one to work at night until you had a 19 night manager? 20 A. Somebody had to. 21 Q. Well, if it wasn't you, who 22 would it be? 23 A. Well, like I said, I worked</p>
<p style="text-align: right;">Page 150</p> <p>1 then -- 2 Q. When you started working there, 3 were you working nights? 4 A. When I started? 5 Q. Yeah. 6 A. No. I did -- first couple of 7 weeks, I worked day shift. 8 Q. Okay. Did you start working 9 nights at some point? 10 A. I did the couple of days that 11 I -- you know, I said I was told during 12 the interview process I should do. And, 13 like I said, our numbers from the very 14 start -- way before I got there up until 15 now, just our shorts on trucks, our 16 mispicks, that type stuff was just 17 through the roof, so to speak. And 18 that's when it was suggested that I 19 needed to start working -- or not 20 suggested. I was just told I needed to 21 start working nights to see if we 22 couldn't get a handle on how to get our 23 numbers better and solve some of the</p>	<p style="text-align: right;">Page 152</p> <p>1 one -- Randy and I rotated out. 2 Somebody had to be there. 3 Q. Had y'all hired another night 4 manager before you stopped working at 5 Merchants Foodservice? 6 A. We had. 7 Q. Who did y'all hire? 8 A. His name was -- I think his 9 first name was James. His last name was 10 Tankersley. 11 Q. As operations manager, did you 12 have to work with James Tankersley to 13 who him how things operated? 14 A. I did. 15 Q. Was that out of the ordinary for 16 an operations manager to have to do 17 that? 18 A. No. 19 Q. Before Phillip quit, the four 20 weeks or so that you worked nights, why 21 did you work nights those weeks? 22 A. Just because the night shift was 23 in such disarray. I mean, we were late</p>

38 (Pages 149 to 152)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 153</p> <p>1 trucks, short on employees, just -- I 2 mean, it was just horrendous the way it 3 was -- we were functioning on night 4 shift. 5 Q. Do you know what the numbers for 6 the night shift were before you started? 7 A. I don't have any recollection of 8 any numbers, what they were before I 9 started or what they were while I was 10 there. 11 Q. Do you know how they compared 12 while you were there to before you were 13 there? 14 A. I think they were actually worse 15 while I was there, but I don't know 16 that. Just I didn't make my bonus, so 17 something must have been wrong. 18 Q. How many Saturdays did you have 19 to work? 20 A. Worked a total of eight. 21 Q. Why did you work those 22 Saturdays? 23 A. A couple of them were for</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. As an operations manager, is 2 that something that you would be 3 expected to be at? 4 A. I'm sure you would be, yes. 5 Q. How about the truck drivers 6 meetings, as the operations manager over 7 transportation, is that something you 8 needed to be at? 9 A. They thought I did. 10 Q. Who is "they"? 11 A. Merchants. Hal. 12 Q. Were there any Saturdays that 13 you went up on your own just because you 14 felt like you needed to get some stuff 15 done? 16 A. No. 17 Q. Do you think Hal was a good 18 boss? 19 A. Good in which way? 20 Q. I mean, just in general did you 21 think he was a good boss? 22 MR. BLYTHE: I'm going to object 23 to the form of that question. Go ahead</p>
<p style="text-align: right;">Page 154</p> <p>1 inventory, scheduled inventories. Our 2 inventory was so messed up, we 3 actually -- they called a different 4 inventory or our numbers from one 5 inventory didn't match up. You know, 6 something was wrong and we were required 7 to do another inventory, and that was a 8 Saturday. One Saturday, we had a -- I 9 think they had a rodeo or something like 10 that. And one Saturday, we had some 11 truck -- truck drivers meetings and I 12 don't think that adds up to -- I don't 13 remember why -- why I was there. 14 Q. I don't understand what you mean 15 you had a rodeo. 16 A. For the truck drivers. They 17 participate in an obstacle course type 18 deal and then whoever wins that rodeo 19 actually gets a trip to go to 20 participate in the national rodeo. 21 Q. Okay. 22 A. So it was just a function for 23 the drivers.</p>	<p style="text-align: right;">Page 156</p> <p>1 and answer it. 2 A. On a scale of one to ten -- and 3 this may not be the way you want me to 4 answer it -- I would say Hal was 5 probably a three. 6 Q. Okay. Why would you say he was 7 a three? 8 A. One, I never had -- and this is 9 me personally. From all I had been told 10 beforehand to what I found out from day 11 one, I knew he had out-and-out lied to 12 me to get me to come to work there. So 13 I'm not going to put a whole lot of 14 faith in that individual from the 15 get-go. To disrupt my life and alter my 16 life -- it wasn't just a disruption. It 17 altered my life forever. What he told 18 me and what he led me to believe and the 19 basis for my coming to work there, it's 20 hard to pat that man on the back and 21 say, yeah, he's a great guy. 22 Q. In terms of his leadership for 23 the folks working there, how did he do</p>

39 (Pages 153 to 156)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 157

1 at that?

2 A. I think everybody liked Hal.
 3 Hal wanted -- Hal wanted to be liked. I
 4 think he sometimes may have made
 5 promises to the sales staff, that's what
 6 he thought they wanted them to hear and
 7 not necessarily what he thought he could
 8 deliver. So, there again, from an
 9 integrity standpoint, I'm not sure. You
 10 know, I know he wanted to be liked and
 11 everybody did, for the most part. The
 12 other employees did like Hal.

13 Q. The things that you say were
 14 told to you to make you decide to come
 15 to Merchants, were those things -- are
 16 those things that were primarily made by
 17 Hal, or are they things you're saying
 18 were also made by Don and Andy?

19 A. Predominately, like I said, Hal
 20 conducted the nuts and bolts of the
 21 interview. Andy and Don came in, more
 22 or less, in a mop-up effort just to meet
 23 and greet. And, you know, the few

Page 158

1 questions I've already mentioned that
 2 they asked, they asked, but I think they
 3 were relying on Hal's recommendation
 4 from what transpired. And that's just
 5 the way I see it.

6 Q. You're claiming here that you
 7 were fraudulently induced to come to
 8 work at Merchants Foodservice.

9 A. Uh-huh.

10 Q. I'm just trying to figure out
 11 who you think are the folks that
 12 fraudulently -- I mean, how you were
 13 fraudulently induced to come here in
 14 terms of what was said.

15 A. In terms of what was said?

16 Q. Yeah.

17 A. Hal Henson.

18 Q. Okay. All right.

19 A. He's the one that made the
 20 promises, the statements, the deviation
 21 from -- you know, you keep going back to
 22 handbooks and all that. I didn't base
 23 any of my decision to come to work for

Page 159

1 Merchants on any of this material right
 2 here. It was all based on what I was
 3 told during the interview by Hal Henson.
 4 And, like I said, you throw in the
 5 family orientation stuff and all like
 6 that from Andy. But by and large, Hal
 7 Henson told me everything I relied on to
 8 base my decision on.

9 Q. When you started there, did Hal
 10 give you -- and throughout while you
 11 worked there, did Hal give you guidance
 12 in how to run the operation?

13 A. No, he did not.

14 Q. What did he do?

15 A. He let me know what was wrong or
 16 what he thought was wrong and told me I
 17 needed to fix it.

18 Q. We talked about vacation days
 19 and what you were told. How many
 20 vacations days did you request while you
 21 worked there?

22 A. I asked off three particular
 23 instances. The first two was just a

Page 160

1 day.

2 Q. Okay. What happened on those
 3 two instances when you asked off?

4 A. I was just told that now, you
 5 know, I couldn't have them. One was --
 6 and then I tried to tie it all with the
 7 weekend, you know, to -- I didn't want
 8 one isolated day on a Tuesday or
 9 Wednesday, but I was just told that I
 10 couldn't have them. The last time I
 11 asked off was in June, I think, and this
 12 was in a meeting I had with Scott Casey
 13 and Hal Henson. And we had something
 14 coming up, a family deal down in Florida
 15 that I wanted to -- you know.

16 And at this point in time, I
 17 wasn't asking for just a day off I had
 18 been promised and never got. I actually
 19 in January 1 -- according to the
 20 handbook and I think maybe it states
 21 this and in my statement I said what Hal
 22 told me was a year after -- five days
 23 after a year, which is what he told me.

40 (Pages 157 to 160)

FREEDOM COURT REPORTING

Page 161

1 But if you had been there a certain
2 amount of time, you got prorated like
3 when the year started in January '05, I
4 actually accrued two days' vacation
5 then.

6 And this was in June that I made
7 this request for two days off to go to
8 Florida with my family for a reunion and
9 I was just told I couldn't have them.

10 And at the time, I told Hal -- I said,
11 "Well, Hal, I've been here for over ten
12 months. You told me I could have off.
13 You told me all I ever had to do was ask
14 off and you'd give me time off. All I
15 want is two days and I'll use my
16 vacation days. But I would like to have
17 off. I haven't been off in ten months."
18 He said now is not the time. And the
19 place was in turmoil. I'm not denying
20 that. It was in a shambles. But I was
21 mentally, physically beat, frustrated
22 and asked for two days off for a little
23 R and R and spend some time with my

Page 163

1 pitching in and helping or offering
2 any -- you know, other than needing to
3 work longer was how he helped me. You
4 know, telling me I needed to work
5 longer.

6 **Q. When did he come over?**

7 A. I don't know when he actually --
8 he came to work after I came to work
9 there and the -- my counterpart in
10 Jackson -- and I'm trying to think of
11 his name -- he replaced him. He was
12 fired and Scott replaced him. And
13 sometime shortly thereafter, he was
14 named something else. I don't recall
15 what his title was, but he was given
16 another --

17 **Q. Director of operations? Does
18 that sound --**

19 A. No. I think that's what he was
20 hired as, but --

21 **Q. When did he come over there to
22 Clanton to observe?**

23 A. He came -- during some period in

Page 162

1 family and was told I couldn't have it.
2 Now was not the time to be asking off.

3 **Q. The other two times that you had
4 asked for a day off to go at the
5 weekend, were you told why you couldn't
6 have those days off?**

7 A. I don't recall why -- the reason
8 why. I just -- that I was told I could
9 not have them.

10 **Q. Do you know how operations were
11 going around that time when you asked to
12 be off on those Fridays or Mondays?**

13 A. An overview of how it ran the
14 whole time I was there, it was awful, to
15 be honest with you. It never got any
16 better. It just gradually continued to
17 get worse despite my efforts.

18 **Q. At some point, did Scott Casey
19 come over to help out in the operations?**

20 A. I'm not going to say he was so
21 much there to help as he was to observe.

22 **Q. Okay. What --**

23 A. I don't remember him ever

Page 164

1 time, he would come almost every other
2 week.

3 **Q. Okay.**

4 A. He was a regular there the last
5 six or eight weeks that I worked there.

6 **Q. Did he ever stay for an extended
7 period of time, or was it just to come
8 for a day and then go back?**

9 A. No. He would spend the night.
10 Sometimes a couple of nights.

11 **Q. While he was there, did you tend
12 to work more?**

13 A. Did I --

14 **Q. Tend to have longer hours?**

15 A. No.

16 **Q. By this point, what hours were
17 you working in a typical day?**

18 A. In a typical day, from 6:45 in
19 the morning till 5:15, 5:30 in the
20 afternoon.

21 **Q. About how long of your
22 employment were those the hours that you
23 were typically working?**

41 (Pages 161 to 164)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 165</p> <p>1 A. I started working that when 2 Phillip's absenteeism got to where it 3 was a problem. I was still coming in 4 the 6:45 to 7:00 clock-ish for day shift 5 reasons, but then I needed to stay and 6 be there. The night shift normally came 7 in -- depending on -- you know, we would 8 know the day beforehand what our 9 schedule basically looked like for the 10 next day and we tried to keep our night 11 shift from coming in too early if day 12 shift wasn't going to be through, so you 13 didn't have all your selectors around on 14 the clock being nonproductive. But when 15 Phillip's absenteeism got to be a 16 problem, I had to stay there and ensure 17 that he showed up. And in the interim, 18 Rodney had been fired and we had 19 promoted two of the lead men to 20 supervisors and they were green as grass 21 as far as running a shift or dealing 22 with employees, you know. They were 23 used to being an employee; not a</p>	<p style="text-align: right;">Page 167</p> <p>1 never saw one leave. 2 Q. Any other problems at the plant 3 that you were not expecting when you 4 started working there? 5 A. Well, I wasn't expecting the 6 equipment to be in the shape it was in, 7 given it was a newer facility than what 8 I came from. But the equipment was just 9 awful. Breakdowns constantly, no 10 scheduled PMs on it, no -- preventive 11 maintenance is what a PM is. No 12 nothing. It was just -- when it got to 13 where it wasn't operational and would 14 not run anymore, that's when they would 15 fix it. 16 Q. Did you talk to Hal or did Hal 17 talk to you about the machinery during 18 the interview? 19 A. I talked to Hal and Hal told me 20 I needed to be talking to Jimmy Triggs; 21 not to him. That Jimmy Triggs was 22 corporate maintenance and he controlled 23 the pursestrings, so to speak, on what</p>
<p style="text-align: right;">Page 166</p> <p>1 supervisor. So to give you a specific 2 from this date to that date, I can't. 3 But that's about the time those hours 4 started. 5 Q. When you worked at SYSCO or Alex 6 City doing the food distribution, did 7 you ever have a manager quit or get 8 fired, or supervisor? 9 A. Never had one fired at Alex City 10 Provision. Like I said, we were smaller 11 than Merchants and I basically only had 12 the one guy on days and the one guy on 13 nights. When George died on nights and 14 Mark moved up to take his spot and, like 15 I said, he was there, so I didn't. And 16 the whole time I was at SYSCO as far as 17 day shift, night shift, never had one 18 leave for any reason. As our business 19 grew, they actually promoted, you know, 20 one of the night sups to assistant night 21 manager and hired one of the lead men 22 off of nights to be a supervisor. So 23 they actually increased the staff, but I</p>	<p style="text-align: right;">Page 168</p> <p>1 could and could not be done with the 2 equipment. 3 Q. I'm going to mark as Defendant's 4 Exhibit 18 -- is this an e-mail dated 5 May 26th, 2005 to Jimmy Triggs? Was 6 that what you were talking about in 7 terms of getting in touch with Jimmy 8 Triggs about the equipment? 9 (Defendant's Exhibit No. 18 was 10 marked for identification and 11 is attached.) 12 A. This particular e-mail was after 13 we -- I had eventually convinced Jimmy 14 to start a scheduled maintenance 15 program. Our repairs -- and I don't 16 remember exactly and I may be off here 17 or there. But not our maintenance, but 18 our repair bills on our equipment 19 averaged an excess of \$10,000 a month 20 for repairs. So I finally convinced him 21 it would be -- and I think Andy was part 22 of this decision-making process, that it 23 would be cheaper and more effective from</p>

42 (Pages 165 to 168)

FREEDOM COURT REPORTING

Page 169

1 the long-run standpoint, one, to get the
2 stuff up and running so we weren't
3 working half the night with half our
4 equipment broke down; two, from a safety
5 standpoint, we had the equipment out
6 there that was just totally unsafe to be
7 on.

8 And they finally bought into the
9 preventive maintenance and I believe the
10 company we got to come in was Carolina
11 Handling, I believe is who we got to
12 come in and do the scheduled
13 maintenance. And when they started
14 working on the equipment, of course, we
15 wanted to get everything up and going.
16 So they came in and over the course of
17 several weeks did a checkup, so to
18 speak, on each piece of equipment. And
19 they fixed the simple stuff then. Some
20 of them needed the whole carriages
21 replaced on. I mean, expensive,
22 expensive repairs, that given the years
23 of neglect, I mean, it was going to take

Page 171

1 comfortable with that since I wasn't the
2 one that controlled whether they were
3 going to be fixed or not. And I copied
4 Merle Rester who was the corporate
5 safety director on this also.

6 Q. Okay.

7 A. And what I was told in phone
8 conversations by both of them, neither
9 one responded back via e-mail or I would
10 have had that for you. But they just
11 called me back on the telephone and told
12 me not to worry about it. That
13 Merchants had good insurance, that I
14 wasn't an entity or an officer of the
15 company. I couldn't be held liable for
16 anything that happened. And that they
17 were going to work on it and get
18 everything up to snuff and just quick as
19 they could and for me not to worry about
20 it, so --

21 Q. Did Hal say anything to you
22 about the machinery during your
23 interview?

Page 170

1 to get them back in shape.

2 And the guy came in and I had to
3 sign off on all this stuff just before I
4 could send it to Jimmy to be paid and he
5 had red-flagged on each invoice on
6 particular pieces of equipment things
7 that the tech had to point out these are
8 safety violations. And I was signing
9 that I was being made aware of these
10 safety violations. This e-mail to Jimmy
11 was making him aware that I was
12 forwarding some stuff because he said we
13 can't afford to do all this at once.
14 We're going to need to factor it in over
15 a several-month period of time and
16 spread it out over the budget over
17 several months so we don't take such a
18 big hit in one month on our numbers.

19 And I wanted to make Jimmy aware
20 of the fact that I was signing off and
21 putting my name on this that I am aware
22 these pieces of equipment have safety
23 issues with them and I wasn't

Page 172

1 A. No, he did not.

2 Q. Did you ask him anything about
3 the machinery during your interview?

4 A. No, I did not.

5 Q. Anything else that you found
6 working there that you were not
7 expecting?

8 A. Well, I guess -- can I synopsis
9 this?

10 Q. Sure.

11 A. And this goes back to what
12 you've got there in front of you. But
13 the things I found out when I went to
14 work there were, one, I definitely was
15 going to work a lot more hours than they
16 told me; two, I wasn't going to have any
17 time off; three, I was going to work
18 night shift and Saturdays; four -- and
19 this is real important -- is the staff
20 just totally, totally, totally was
21 terrible.

22 I've never worked anywhere in my
23 life that had a turnover rate -- I

43 (Pages 169 to 172)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 173

1 didn't know places existed that had
2 turnover rates this high. Never heard
3 of it in the food service industry
4 before or any other industry. With a
5 200-plus percent turnover on days and
6 400-plus on nights. So that, the
7 condition of the warehouse, the
8 uncleanliness of the warehouse, the --
9 like I said, a five-year-old facility
10 looking 20 years old, the equipment,
11 like I said, looked just like the
12 facility. I didn't expect to find any
13 of that when I went to work there.

14 Q. Okay. We've already talked --
15 you and Hal did not talk about the
16 equipment during your interview?

17 A. No, we didn't.

18 Q. Did y'all talk about the
19 condition or cleanliness of the
20 warehouse during your interview?

21 A. No, I did not. That's when I --
22 you know, I asked for a warehouse tour,
23 but the way he explained it about not

Page 175

1 A. Yes.

2 Q. Where did you get this?

3 A. From Melanie Allstage, the HR
4 director.

5 Q. When did you get it?

6 A. Should be dated. 7/1/2005 is
7 what I'm assuming. That's when she ran
8 the report, so --

9 Q. Were you still working for the
10 company when you got it?

11 A. I was.

12 Q. Why did you take it with you?

13 A. I had it in my belongings when I
14 left.

15 Q. Anything else you had in your
16 belongings from Merchants when you left?

17 A. Just I've given you everything
18 that I knowingly have.

19 Q. What would drivers be considered
20 in terms of employment? Would they be
21 listed as drivers?

22 A. I think they would. I think
23 this is just the -- it's broken down by

Page 174

1 making the announcement yet or anything
2 like that, I -- and I assumed, so
3 that's -- you know, I know what that
4 does. But I assumed that it was going
5 to be real similar to what SYSCO was,
6 given it was a newer facility than what
7 we had there.

8 Q. But Hal didn't make any
9 statements about that?

10 A. No. He didn't say I've got an
11 excellent facility or real clean, brand
12 new equipment. He didn't make that
13 statement like he did about the staff.

14 Q. I'm going to mark as Defendant's
15 Exhibit 19 -- you talked about turnover
16 rates on the day and the night shift.
17 This is a document that your attorney
18 sent me yesterday. I've only got one
19 other copy over here. Is that what you
20 were referring to?

21 (Defendant's Exhibit No. 19 was
22 marked for identification and
23 is attached.)

Page 176

1 day shift and night shift.

2 Q. So transportation is not on
3 here?

4 A. Transportation is not on here.

5 Q. What was the turnover like in
6 transportation?

7 A. I don't have the numbers in
8 front of me. But I know hiring and
9 keeping drivers was a constant problem
10 for us. That's something -- we were
11 trying to hire drivers when I went to
12 work there. We were trying to hire
13 drivers when I left, so --

14 Q. Okay.

15 A. We had actually taken back
16 drivers that had been terminated for
17 whatever reason. We'd actually gone out
18 and asked them to come back to work for
19 us, so that's how bad it was.

20 Q. What made you decide to leave
21 Merchants Foodservice?

22 A. It's stated in my thing, the day
23 I left, which was July the 12th, I

44 (Pages 173 to 176)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 177

1 believe. That was one of Scott's
 2 days -- that's the day he arrived, best
 3 I remember, and we had had a meeting
 4 that morning discussing a few things.
 5 And he got there at 10:30, 10:45,
 6 something like that. So we broke for
 7 lunch and we were going to continue
 8 after lunch when we got through. And
 9 after lunch at 1:00 or so, came back in,
 10 went to the conference room. Scott,
 11 Hal, and myself sat down and Hal told me
 12 that Scott was fixing to discuss a few
 13 things with him and that I could just
 14 deem him being the one -- I was always
 15 told that Hal was my boss. He was my
 16 supervisor. He -- you know, Hal was who
 17 I answered to. But Hal made the
 18 statement that Scott was fixing to make
 19 a few statements and what he said, I
 20 could consider it coming from him
 21 because he and Scott had already talked
 22 about it.
 23 And Scott told me that -- Scott

Page 179

1 gotten worse. And, like I said just a
 2 couple weeks earlier, Scott had denied
 3 me being off any time. And, you know,
 4 even after I explained to him that I was
 5 mentally and physically had all I could
 6 have and take with just bumping your
 7 head up against a brick wall and then
 8 for him to come in and tell me that I'm
 9 going to start working 60 hours a week,
 10 that's mandatory, and I'm going to work
 11 nights one week and day shift the next
 12 week, that was just the proverbial
 13 straw.
 14 I gave them my stuff and I don't
 15 think -- I don't remember writing a
 16 letter of resignation. I don't
 17 remember -- I know I didn't clean my
 18 desk out. I didn't do anything. I was
 19 just -- just shaking. I was -- I don't
 20 know if I was mad, distraught, what, but
 21 I'd had it.
 22 I've never left a job in my life
 23 without already having one in place to

Page 178

1 had told me on more than one occasion
 2 that I needed to be working 11, 12 hours
 3 a day. That's what he did all the same
 4 time in Jackson and -- but when we first
 5 got started, he said, "Steve, I've got
 6 to lay out some things for you." He
 7 said, "From now on, I expect you to work
 8 60 hours a week." And he said, "You're
 9 going to work day shift one week and
 10 night shift the next." And he said,
 11 "Until I tell you different, that's
 12 going to be your schedule."
 13 And I immediately stood up,
 14 handed in my keys or put them on the
 15 desk. I didn't hand them to anybody. I
 16 laid my keys and my cell phone on the
 17 desk and told them I quit. I could do
 18 them a letter of resignation if they
 19 wanted me to, but I was through. I told
 20 them I had been fed up from the get-go
 21 from being lied to, that nothing I was
 22 told was like it was when I was coming
 23 to work here. It progressively had

Page 180

1 go to. But I walked out that facility
 2 not having a clue what I was going to
 3 do. When I got in the car, I got my
 4 cell phone and my wife knew the pressure
 5 I was under and what I was going through
 6 and she told me many times just quit.
 7 Tell them to kiss your ass and leave.
 8 But I didn't. I had to have a job and I
 9 was hoping for a long time I could make
 10 that work, but I couldn't.
 11 And I called her and I told her
 12 I quit and she said, "How do you feel."
 13 I said, "Baby, believe it or not, I feel
 14 like the weight of the world has been
 15 lifted off my shoulders." And she said,
 16 "Well, good for you." And I've just
 17 been -- you know, two months without
 18 working, couldn't --
 19 Q. If you need to take a break, we
 20 can.
 21 A. Yeah, if I can. Yeah.
 22 MR. DYKES: That's fine.
 23 (A break was taken.)

45 (Pages 177 to 180)

FREEDOM COURT REPORTING

Page 181	Page 183
<p>1 Q. (BY MR. DYKES:) I'm going to 2 mark as Defendant's Exhibit 20 a 3 resignation letter. 4 (Defendant's Exhibit No. 20 was 5 marked for identification and 6 is attached.) 7 Q. Do you recognize this, 8 Mr. Adams? 9 A. I do. 10 Q. Have we talked today about the 11 things in the letter that you were 12 saying nothing I was told during the 13 interview process has turned out to be 14 truthful? Have we talked about all of 15 those things? 16 A. We have. 17 Q. Okay. Have we talked about the 18 problems that you had in the facility 19 once you started working there? 20 A. Uh-huh. 21 Q. Any area that we haven't talked 22 about that you can remember? 23 A. I can't remember any other that</p>	<p>1 where I had ever been in my life, you 2 know, was something like I'd never seen. 3 But I was lured away from that 4 by what turned out to be just 5 out-and-out fraudulent statements, lies, 6 deceit, ever how you want to phrase it. 7 And I felt like that ought to be against 8 the law. And, so, I put on paper my 9 experience best I could remember from 10 initial contact through the day I left 11 and contacted Derrick. And upon his 12 recommendation -- 13 Q. I don't want to know what 14 Derrick told you. 15 MR. BLYTHE: Yeah. Don't -- 16 Q. Yeah. I don't want to know 17 that. 18 A. Okay. Just I think I had a 19 case, a real good case, because I know 20 what happened to me, I know what was 21 told to me, and I know what I walked in 22 and found out to actually be the case. 23 I know what I gave up leaving SYSCO and</p>
Page 182	Page 184
<p>1 I need to talk about or bring up. 2 Q. And I understand that you're not 3 a lawyer, and I know that your attorney 4 drafted your complaint, which I'm going 5 to mark as Defendant's Exhibit 21. 6 (Defendant's Exhibit No. 21 was 7 marked for identification and 8 is attached.) 9 Q. This is a copy of the complaint 10 that was filed in the case. 11 MR. DYKES: I figured you 12 probably have got one. 13 MR. BLYTHE: Yeah, I've got it. 14 Q. (BY MR. DYKES:) Can you just 15 tell me in your own words why you filed 16 this lawsuit? 17 A. In my own words, I was, for lack 18 of a better term, lured away from a job 19 I had, a good job I had, a job that I 20 really enjoyed, a job with great 21 benefits, a good salary. Just the 22 financial end of working at SYSCO 23 compared to where I had come from or</p>	<p>1 I know at a bare minimum what I could 2 have had at retirement. Their policy 3 was three percent minimum annual raise. 4 I never received less than, I think, 5 four in my tenure there. As much as 6 eight in a year's time, but a minimum of 7 three. It was guaranteed to me. And 8 you expound that out to the age I retire 9 and what that would have been, worse 10 case scenario, against what I can 11 expect, given my certain circumstances, 12 then you do the same thing with my 13 pension plan I had there. 14 They had a pension plan that was 15 based solely on longevity. It wasn't 16 anything I contributed to. It wasn't 17 anything -- you know, wasn't 401-K or 18 something like that they matched. This 19 was an employee benefit they gave their 20 employees for long-term service. That's 21 a finite. That's written in stone what 22 their policy is. I know what I'm 23 drawing now. I was vested fortunately</p>

FREEDOM COURT REPORTING

Page 185

1 and I'll draw a small pension, but it's
2 a penance compared to what I would have
3 drawn had I completed my career at
4 SYSCO. It's substantial in both cases,
5 the difference in salary, plus my
6 pension are substantial. And I filed
7 the lawsuit to recoup what I had, and
8 pardon the French, or I won't -- I'll
9 phrase it a different way, that I had
10 been wronged out of.

11 **Q. How much do you think you were**
12 **wronged out of in salary?**

13 **A.** The way I put it together was
14 taking my base salary at SYSCO, no
15 bonus, just my base salary, and did that
16 out exponentially three percent per
17 year. So this is worse case scenario.
18 Against what I hope to go to work for.
19 Actually, before I -- a couple of weeks
20 I was unemployed mulling over what to do
21 and, you know, I spent some time on the
22 Internet looking at what constitutes
23 fraud or breach of contract, you know.

Page 186

1 I researched best I could in layman's
2 terms on the Internet. And to put a
3 dollar figure on it, I went -- worse
4 case scenario with SYSCO, I applied for
5 several jobs that the position I was
6 applying for started out at 35 or less a
7 year. Where I actually went to work, I
8 started at \$700 a week, so that's -- or
9 not 700 a week. I started at 35,000 a
10 year, which is a little less than 700 a
11 year [sic]. But I didn't know where I
12 was going to be working when I put the
13 figures together.

14 But doing it worse case scenario
15 like that in salary, I'm going to lose
16 in excess of \$400,000 over what I would
17 have had bare minimum. And, like I
18 said, that's assuming I stayed a day
19 shift supervisor at SYSCO for the next
20 20 years and was never promoted. That's
21 staying in the same position till I was
22 67 years old.

23 The same with the pension. The

Page 187

1 pension's pretty much etched in stone.
2 It's based on your five years highest
3 salary average time a percent and a half
4 for every year worked. So that's -- you
5 know, that could vary some. But, again,
6 I put my number together worse case
7 scenario and that's -- I don't remember,
8 but it was over \$300,000 according -- I
9 think I gave you a thing that details
10 that.

11 But I'm looking to recoup what I
12 was wronged out of. And I would be
13 willing and -- to send a statement, so
14 to speak, from a punitive standpoint,
15 you know. I don't know whether that's
16 fair or right or whatever. But I feel
17 like I've been wronged and wronged in a
18 bad way and the message needs to be sent
19 to Merchants as well as any other
20 business, I guess, doing business in the
21 State of Alabama that this is against
22 the law. And as far as a punitive
23 standpoint, I would seek whatever a jury

Page 188

1 thought the case merited and I hope that
2 would be substantial.

3 **Q. If another company in the food**
4 **distribution business had come along and**
5 **offered you more than you were making at**
6 **SYSCO like Merchants Foodservice did,**
7 **would you have interviewed with them and**
8 **talked to them about it?**

9 **A.** While I was at SYSCO?

10 **Q.** Well, I mean, you talked to
11 Merchants.

12 **A.** Yeah.

13 **Q.** Because somebody called offering
14 you more money and a better bonus.

15 **A.** Yes.

16 **Q.** If somebody else had called
17 while you were working at SYSCO and
18 offered you more money and a better
19 bonus, would you have talked to them
20 about a job?

21 **A.** Since they never called, I
22 really don't -- don't know.

23 **Q.** Well, let's say that U.S.

47 (Pages 185 to 188)

FREEDOM COURT REPORTING

Page 189

1 Foodservice had been the one calling
2 instead of --

3 MR. BLYTHE: I'm going to object
4 to the form of the question. I'm going
5 to let him go ahead and answer it.

6 Q. Say U.S. Foodservice had called
7 in August of 2004 instead of Merchants
8 Foodservice, would you have talked to
9 them about a job?

10 A. If they had given me the
11 information -- you know, I would have
12 asked what it paid. Just --

13 Q. Right.

14 A. You know, if it had been equal
15 or just that much more, absolutely not.
16 Had it been a substantial salary
17 increase, then, yes, I would have --
18 would have interviewed or pursued it to
19 see where it led and what, in actuality,
20 would be offered, yes.

21 Q. Have we talked about all the
22 ways you think you have been defrauded
23 today?

Page 190

1 A. Yes.

2 Q. Okay. Now, you have a complaint
3 that you were told things that were
4 wrong and we've talked about all those,
5 is my understanding; is that right?

6 A. Uh-huh.

7 Q. There's also a claim that there
8 were things that you were not told that
9 you claim you should have been told. Is
10 there anything that you -- is there
11 anything that you claim you should have
12 been told that you weren't told? Let me
13 strike that question.

14 Other than the statements that
15 you think that you say were told that
16 were wrong, is there any other way that
17 you are claiming that you were defrauded
18 in this case?

19 A. If I understand the question and
20 I think I do, no. I mean, I asked
21 questions, I was answered, and that's
22 what I based my decision on. That's all
23 the information at the time I had to go

Page 191

1 on.

2 Q. Okay.

3 A. So what we've talked about is
4 the basis for the fraud, yes.

5 Q. Okay. We've talked monetarily
6 how you believe you've been damaged.
7 What other ways do you claim that you've
8 been damaged?

9 A. From a -- like I said, and I
10 don't know how this factors in to
11 anything, I'm just going to tell you my
12 mental state, you know, and when I
13 finally resigned, wasn't eating, wasn't
14 sleeping, just not -- I knew it couldn't
15 go on much longer, not given the way
16 things were. I had no foreseeable light
17 at the end of the tunnel that things
18 were going to get better.

19 And from a financial standpoint,
20 a man with a house, truck payment, car
21 payment, all those sort of things, I
22 didn't know what I was going to do. But
23 I knew I couldn't keep on doing what I

Page 192

1 was doing, so just -- you know, I don't
2 really know what mental anguish is or
3 anything like that. I was physically
4 and mentally distraught, I guess, is the
5 best way to put it. Couldn't eat,
6 couldn't sleep.

7 My wife would probably tell you
8 I couldn't do something else. But, you
9 know, I figured that would heal in time.
10 You know, just like I said, when I quit
11 and walked out the door and called my
12 wife, I felt better immediately. The
13 weight of the world lifted off my
14 shoulders temporarily. But then the two
15 months I was there living off cashing
16 CDs and cashing in my 401-K and living
17 off money I'd worked hard to save
18 because the bills kept on coming in, you
19 know, they didn't care whether I was
20 working or not. They didn't stop. So
21 that plays on you wondering what you're
22 going to do when that money runs out.
23 And I started trying to find a job two

48 (Pages 189 to 192)

FREEDOM COURT REPORTING

Page 193

1 days after I left and it took me two
2 months to find a job.

3 **Q. Where all did you look for a**
4 **job?**

5 A. Locally, I tried Samlip, which
6 they make automotive parts for -- I
7 think it's a Honda or Hyundai
8 dealership. Honda dealership. Wellborn
9 Cabinet has a real nice facility there.
10 They hire about 400 people or employ
11 about 400 people. They build custom
12 cabinetry. Tried Wellborn. The brother
13 has got a competing plant there in
14 Ashland, which is about 35 miles away.
15 I tried Wellborn Cabinet. I did try the
16 Honda plant in Lincoln. I tried the
17 State of Alabama in Montgomery, Auburn
18 University in Auburn.

19 **Q. What did you try at the State of**
20 **Alabama?**

21 A. They have just -- if you go
22 online to their Web site, they've
23 actually got a list of positions that

Page 194

1 are available. Some are merit positions
2 that only existing employees can apply
3 for. Some are at-large and you actually
4 fill out an application, three or
5 four-page application that lists your
6 qualifications, your education. And,
7 you know, they give you the criteria --
8 minimum criteria to be eligible for the
9 job that you are applying for. And
10 actually, my brother works with the
11 Highway Department. He's a State of
12 Alabama employee. He gave me the
13 directory and told me to how to do it.

14 I went through the positions
15 that I was qualified for and filled out
16 aps and sent in for every one of those
17 and they actually put you on a list and
18 grade you by your application. And I
19 made two lists for the two of the --
20 three of the jobs I applied for, I
21 actually made a list, but it's a list
22 that encompasses -- you know, I don't
23 know how many names go on there. But

Page 195

1 it's sort of a wait and see type deal.
2 We'll call you.

3 And, actually, I did get
4 contacted -- this was after I went to
5 work for Russell Lands. But they
6 contacted me and told me I'd been moved
7 up the list and if I was interested, I
8 needed to respond. And I never
9 responded because I was already
10 gainfully employed again, but --

11 **Q. Okay. Where else did you --**
12 **you got the State of Alabama. What did**
13 **you apply for at Auburn University?**

14 A. I don't remember the position.
15 There again, you can go online there and
16 they list, you know, employment
17 opportunities. It was something to do
18 in a supervisory role. I don't remember
19 the exact department that it was.

20 **Q. Did you get any interviews with**
21 **any of these folks or any of these**
22 **companies?**

23 A. No, I did not.

Page 196

1 **Q. Where was your first interview**
2 **after -- after you left Merchants**
3 **Foodservice?**

4 A. Formal interview was with
5 Russell Lands.

6 **Q. What was that for or what was**
7 **that job for?**

8 A. For the position I hold now,
9 which is assistant manager at the Ridge
10 Marina.

11 **Q. What are you doing as the**
12 **assistant manager?**

13 A. As assistant manager when I
14 started and currently, it's -- my actual
15 job description changes May 1. But the
16 day-to-day running of the marina, which
17 we're a full service owned water marina.
18 We have gas pumps, you know, on the
19 docks and we've got dry storage, stack
20 storage in back. We've got 100 wet
21 slips where we keep our -- customers
22 have larger cruisers in water, you know,
23 cabin cruisers, stuff like that. And a

49 (Pages 193 to 196)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 197

1 dealership -- service department, so
2 it's just managing all those aspects.

3 And I actually did -- when I
4 started there, we had one full-time
5 salesperson who retired. I started in
6 September. Rick actually retired in
7 November and I actually was our
8 full-time salesperson till we hired
9 another salesperson, you know. Along
10 with my responsibilities as assistant
11 manager, I actually was our sales force
12 for a short period of time.

13 We hired another full-time
14 salesman shortly after Rick left and a
15 couple of -- almost a month ago, I
16 guess, we hired another full-time
17 salesperson. So we've got a sales staff
18 of two now that work in the dealership
19 and they're going to be predominantly
20 sales. And we've actually -- our
21 business has grown. We're in the
22 process of adding an additional 450
23 slips now, dry slot slips.

Page 199

1 started out at 35,000 a year,
2 whichever -- I don't know how that
3 breaks down --

4 Q. Yeah.

5 A. -- weekly. Now, I don't really
6 know what my annual salary is. But I
7 did get an increase and my salary now is
8 721.15 a week. So whatever that equates
9 to annually.

10 Q. Are you eligible for any bonuses
11 or anything like that or --

12 A. No bonuses now. When I do sell
13 a boat, I get paid a commission on it.

14 Q. Are there any benefits with the
15 job?

16 A. As far as?

17 Q. 401-K?

18 A. Yeah. They do have a 401-K.

19 Q. Were you able to roll over any
20 benefits from SYSCO or Merchants
21 Foodservice to your job now?

22 A. If I had had any, I could have,
23 yes.

Page 198

1 We're in a development that is a
2 hot spot on Lake Martin, I guess, and
3 it's growing by leaps and bounds. But
4 we've never had a true service manager,
5 parts manager, service writer,
6 blah-blah-blah-blah-blah. Jeff and I
7 sort of split those details; Jeff being
8 the marina manager.

9 But starting in May, I'm totally
10 out of sales and going to be still
11 assistant manager, but my thing is going
12 to be service and storage. I'll
13 actually order the parts, do the service
14 write-ups, distribute those to the
15 techs. And then when they're through
16 with them, I'll bill out the parts to
17 the work order and close the work orders
18 and they get, in turn, passed on to
19 accounts receivable where we send out
20 the statements and get our bills paid.

21 Q. What's your salary with them
22 now?

23 A. My salary is -- like I said, I

Page 200

1 Q. Okay.

2 A. But I used those when I was
3 unemployed, so I didn't have any to roll
4 over.

5 Q. Was your wife working when you
6 left Merchants Foodservice?

7 A. She was.

8 Q. How much was she making?

9 A. Without looking at her W-2 or
10 our taxes, I'm just going to say 35,000
11 a year also. That's mighty close.

12 Q. Do you go to any doctors or
13 therapists as a result of what happened
14 at Merchants Foodservice?

15 A. The only doctors I've been to, I
16 mean, I go for annual checkups or stuff
17 like that. But as far as seeking, you
18 know, therapy or psychiatric help or --
19 you know, no.

20 Q. Okay. And we've talked about
21 all the documents you're aware of that
22 you have that support your case; is that
23 right?

50 (Pages 197 to 200)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 201

1 A. Uh-huh.

2 Q. Other than your lawyer, and I
3 don't want to know anything you talked
4 to your lawyer about, and your wife, who
5 I know you've talked to about the case,
6 have you talked to anybody else about
7 the case?

8 A. The only -- and by talk about
9 it, I'm not sure -- only two other
10 people that I've told -- and I held
11 Laura in confidence and I'm sure she's
12 been true to that -- is my boss Jeff
13 Ellis knows because I've had to take
14 time off from work to prepare for this
15 and other things, so Jeff knows. And
16 then Seneca Kinsey who was my day shift
17 supervisor and friend. Seneca and I
18 have talked several times since I've
19 left. He's aware that I was going to
20 file a lawsuit.

21 Q. What have you and Seneca talked
22 about in terms of your case?

23 A. In terms of the case, not a

Page 203

1 is what he told me. Said it would serve
2 them right for screwing me.

3 Q. Was Seneca in the interview with
4 you when you interviewed for the job?

5 A. No, he wasn't.

6 Q. Does he know anything about what
7 Hal told you other than what you told
8 him that Hal told you?

9 A. No, he doesn't. Not unless Hal
10 told him something. I didn't tell him
11 anything. I mean, other than what I've
12 told him, I have no way of knowing what
13 he knows.

14 Q. And, again, I don't want to know
15 what you talked to your lawyer about.
16 But are there any folks that work for
17 Merchants Foodservice that you think
18 have knowledge that would support your
19 case or that worked at Merchants
20 Foodservice with you?

21 A. Hal Henson would have full
22 knowledge of it. Scott Casey can
23 testify to the conversations about me

Page 202

1 whole lot. Just -- you know, we talked
2 a good bit while I was at Merchants and
3 he was aware of how I was hired and
4 stuff like that, to some degree. I
5 didn't go into every aspect of
6 everything with him. But when I called
7 him after I'd left and, you know, most
8 of our conversations have had nothing to
9 do with the case. It's more just
10 friendly chitchat and keeping up with
11 each other.

12 Q. Okay. What did you tell your
13 boss now why you left Merchants
14 Foodservice?

15 A. I told him exactly what I've
16 told you.

17 Q. Okay.

18 A. I mean, he's aware of
19 everything.

20 Q. Did Seneca make any comments or
21 talk to you about any recovery you might
22 get in the case?

23 A. He hoped I got a ton of money,

Page 204

1 needing to work longer hours and about
2 my 60-hour schedule and on and off.
3 Nights on and off, you know. Nights one
4 week and days one week.

5 Q. What hours are you working now?

6 A. I work 8:00 to 5:00.

7 Q. Monday to Friday?

8 A. Well, actually, it varies with
9 the season of the year. You know, we
10 have winter hours when we're not busy.
11 Being a local lake, the climate's not
12 conducive to boating in the wintertime,
13 so we actually shut down on Sunday and
14 Monday during the winter months. And
15 then like right now, I'm off on Friday
16 and Saturday. And then as we move past
17 May and, actually, are -- you know,
18 Saturday and Sunday is our busiest time,
19 so everybody at the marina works
20 Saturday and Sunday May through Labor
21 Day. And then I'm off -- you know, my
22 weekend may be a Thursday, Friday or
23 Wednesday, Thursday. We normally try

51 (Pages 201 to 204)

FREEDOM COURT REPORTING

Page 205

1 and set that out where you've got the
2 same off days. But it's a five-day
3 schedule.
4 Q. Okay.
5 A. But it rotates with the season.
6 Q. I jumped off talking about other
7 folks who you think have knowledge that
8 would help your case.
9 A. No.
10 Q. Anything we haven't talked about
11 today that you want to add to support
12 your claims?
13 A. Can't think of anything.
14 Q. Have you ever filed for
15 bankruptcy?
16 A. No, I have not.
17 Q. Ever had any repossessions or
18 foreclosure actions against you?
19 A. Never have.
20 Q. IRS ever placed a levy on your
21 wages?
22 A. No. I'm shaking my head. But,
23 no.

Page 206

1 MR. DYKES: Can we take just a
2 quick break? I think I'm about done.
3 MR. BLYTHE: Sure.
4 (A break was taken.)
5 Q. (BY MR. DYKES:) Do you like
6 where you're working now?
7 A. I'm happy to have a job.
8 Q. Are you looking at other --
9 looking for other jobs now as well?
10 A. No, I'm not now. I mean, based
11 on what I found when I was looking for
12 what I've got now, the economy around
13 Alex City and, you know, if anything's
14 gotten worse, I think the job market
15 picture there is more bleak now than it
16 was when I was looking, so --
17 Q. I know we talked earlier that
18 you didn't go back and look at SYSCO
19 after you left Merchants Foodservice.
20 A. Uh-huh (nodding head
21 affirmatively).
22 Q. Did many managers lose their job
23 there at the Calera branch as a result

Page 207

1 of the changes?
2 A. As far as I'm aware of, no
3 manager lost their job there. The way
4 SYSCO handles their fold-out is their
5 surplus they've got left and that's
6 going to be short-term because they're
7 going to go out and replace that lost
8 business with new business. But they
9 offer -- say, they take a night shift
10 selector and may offer him a night
11 shift -- if he's qualified, a
12 supervisory position at the new
13 facility. They pay their expenses to
14 move and all like that. So they get a
15 promotion and a free move to where
16 they're going.
17 And the only guy I know -- I had
18 a guy that used to be one of my day
19 shift forklift operators, took the job
20 as day shift supervisor down there. My
21 counterpart on days, which was Scott
22 Baggett, who was -- we sort of shared
23 duties or whatever. But Scott actually

Page 208

1 took the job as the day shift manager
2 down at Geneva. Those were the -- as
3 far as losing jobs, no. Some actually
4 left that facility with, you know, a
5 promotion in hand and to take a job at
6 the new facility.
7 Q. Where is Geneva?
8 A. It's down in -- I think -- I
9 want to say southeast Alabama right on
10 the -- right on the Florida line almost.
11 Get -- you know, 20 or 30 miles.
12 Because we were shuttling -- from SYSCO,
13 we were shuttling trucks to south
14 Alabama and working the panhandle of
15 Florida and just given the current scope
16 of things, it was easier and over the
17 long run, more financially conducive to
18 do the expense of starting a new plant
19 and then absorb that over the next few
20 years and what you save in
21 transportation costs and shuttling --
22 you know, deadheading groceries down
23 there to turn them over to another

52 (Pages 205 to 208)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-800-373-3660

FREEDOM COURT REPORTING

Page 209

1 driver to start delivering them.

2 **Q.** If you had stayed at SYSCO and
3 been asked to move to Geneva, is that
4 something you would have done?

5 **MR. BLYTHE:** I'm going to object
6 to the form. Go ahead and answer.

7 **A.** There again, it would have been
8 not a sole decision based on me. That
9 would have been something my wife and I
10 would have talked about. Now, her
11 family -- her grandparents being from
12 Geneva may have factored in on that
13 highly, you know. So chances are had I
14 been offered the promotion and the job,
15 chances are I might have.

16 **Q.** Okay.

17 **A.** But, there again, like I said,
18 that's a hypothetical. It never
19 happened, so I don't know. So I can't
20 truthfully tell you yes or no what I
21 would have done.

22 **MR. DYKES:** Okay. All right. I
23 don't have any other questions.

Page 210

1 **MR. BLYTHE:** I'm going to
2 follow-up just with a couple of little
3 things.

4
5 **EXAMINATION BY MR. BLYTHE:**

6 **Q.** Steve, tell me -- sometimes on
7 these follow-ups, I get to shotgunning
8 questions. Tell me if I get to cutting
9 you off or going too fast.

10 Just briefly, were the working
11 conditions different at Alex City
12 Provision and Merchants?

13 **A.** I mean, when I left Alex City
14 Provision, the warehouse ran like a
15 sewing machine, if that's what you're
16 asking. When I went to work at
17 Merchants, it was just terrible.

18 **Q.** Okay. And were the management
19 styles, for instance, of Alex City
20 Provision and SYSCO different than at
21 Merchants?

22 **A.** At Alex City Provision and
23 SYSCO, the employees knew what was

Page 211

1 expected of them and the management
2 expected it of them and if they didn't
3 do what was expected of them, then they
4 suffered the consequences in terms, to
5 start with, in written disciplinary
6 action and then possibly followed by a
7 suspension or, worse case scenario, they
8 would lose their job. But they knew it
9 was coming.

10 You know, I never fired -- I
11 never fired but one person the whole
12 time I worked at SYSCO. And I don't
13 remember -- it was very few I ever let
14 go at SYSCO or Alex City Provision once
15 I became operations manager. But they
16 all knew what was coming because it was
17 spelled out in the form of a written
18 discipline their action. If this
19 happens again, this is what's going to
20 happen. So one of my statements I've
21 always made is I've never fired anybody.
22 You fired yourself. So that's the way
23 I've always looked at that.

Page 212

1 But it was totally different
2 because I couldn't -- I didn't have
3 that -- that avenue at Merchants to
4 control the work force because I
5 couldn't discipline them.

6 **Q.** And is that something that you
7 were told when you were interviewed and
8 hired for that job?

9 **A.** No. I -- we didn't discuss
10 discipline or --

11 **Q.** But they didn't come out and
12 say, "Hey, by the way, we're not going
13 to let you discipline or fire any of
14 these people. We need to hang on to as
15 many as we can." Did they tell you
16 anything about that?

17 **A.** No.

18 **Q.** And I guess just briefly, Steve,
19 the working conditions at Merchants were
20 different than the way they were
21 presented or described to you by Hal; is
22 that correct? Is that a correct
23 statement?

.53 (Pages 209 to 212)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 213</p> <p>1 A. That's absolutely 100 percent</p> <p>2 correct.</p> <p>3 Q. Okay. And would that same</p> <p>4 statement be true as Andy and Don were</p> <p>5 involved in the interview process? I</p> <p>6 mean, were there things that they</p> <p>7 omitted to tell you during that process?</p> <p>8 A. The omission, I guess, would</p> <p>9 have been, you know, when I asked</p> <p>10 something, they answered it. And they</p> <p>11 didn't volunteer anything as far as --</p> <p>12 I'll put it like that. They didn't tell</p> <p>13 me the warehouse was a shambles, that it</p> <p>14 looked like a 20-year-old facility, that</p> <p>15 the equipment was terrible or in need</p> <p>16 of -- you know, they didn't volunteer</p> <p>17 anything. I'll put it like -- they</p> <p>18 answered my questions or gave me an</p> <p>19 answer to the questions I asked, but</p> <p>20 they never volunteered anything, no.</p> <p>21 Q. Okay. Now, was it possible to</p> <p>22 make as much in bonus as Hal had told</p> <p>23 you with the conditions at Merchants as</p>	<p style="text-align: right;">Page 215</p> <p>1 percent of his numbers and there was no</p> <p>2 reason why I couldn't expect to do the</p> <p>3 same.</p> <p>4 Q. Okay. What has been previously</p> <p>5 marked and entered as Defendant's</p> <p>6 Exhibit 1 is the summary of -- and if</p> <p>7 you would, look at that.</p> <p>8 MR. DYKES: Actually, 1 is the</p> <p>9 deposition notice.</p> <p>10 Q. Well, 2. As Defendant's Exhibit</p> <p>11 2, does that pretty much sum up</p> <p>12 everything that's happened and why you</p> <p>13 feel this case should proceed?</p> <p>14 A. Absolutely.</p> <p>15 Q. Now, when you were interviewing,</p> <p>16 did -- and I'm going to give this to you</p> <p>17 in two parts -- did Hal talk to you</p> <p>18 about your job at SYSCO and what those</p> <p>19 duties were and what you were doing and</p> <p>20 making and everything there during the</p> <p>21 interview?</p> <p>22 A. At SYSCO?</p> <p>23 Q. Yes.</p>
<p style="text-align: right;">Page 214</p> <p>1 they were?</p> <p>2 MR. DYKES: Object to the form.</p> <p>3 Q. Go ahead and answer.</p> <p>4 A. I don't think the way the</p> <p>5 conditions were and -- you know, it</p> <p>6 factored into cases per hour, mistakes.</p> <p>7 Profit factored in. So just given the</p> <p>8 scope of the -- what I walked into, I</p> <p>9 don't think anybody could -- at that</p> <p>10 point in time -- not before and not</p> <p>11 after, but at that point in time, given</p> <p>12 to contend with what I had to contend</p> <p>13 with and was up against, I don't think</p> <p>14 anybody -- and that's my opinion, but I</p> <p>15 don't think anybody could have made any</p> <p>16 of the bonus, much less assume that you</p> <p>17 were going to make 30 percent of it.</p> <p>18 Q. Okay. And that's what Hal had</p> <p>19 presented to you in the interview</p> <p>20 process?</p> <p>21 A. He told me that my</p> <p>22 predecessor -- and, there again, I don't</p> <p>23 know his name -- routinely made 18 to 20</p>	<p style="text-align: right;">Page 216</p> <p>1 A. Yes. He -- he wanted to know</p> <p>2 what I was currently making and what I</p> <p>3 actually did on a day-to-day basis</p> <p>4 there.</p> <p>5 Q. And, here again, this is a</p> <p>6 two-part question. Did Andy and Don,</p> <p>7 when they came in and interviewed you,</p> <p>8 talk to you about that some?</p> <p>9 A. Andy -- I don't know if Hal</p> <p>10 mentioned, but it came up about how we</p> <p>11 did replenishments at SYSCO on day</p> <p>12 shift. I mentioned earlier that's</p> <p>13 stocking the pick slots for night shift</p> <p>14 when they come in, so they don't start</p> <p>15 selecting with, you know, a bunch of</p> <p>16 empty pick slots. And that was totally</p> <p>17 different from the way Merchants was</p> <p>18 doing it. And I don't know if Andy</p> <p>19 seemed intrigued or -- that was</p> <p>20 something that he was interested in</p> <p>21 because when you come in and you don't</p> <p>22 have to back -- you're not backing your</p> <p>23 selectors up waiting on letdown</p>

54 (Pages 213 to 216)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 217</p> <p>1 operators on night to fill the pick 2 slots, the first couple of passes go 3 real easy because the picking slots are 4 full. 5 Q. Let me ask you this way, Steve: 6 Once you described what you had done at 7 SYSCO to Andy and Don, did they indicate 8 how you would fit into their company? 9 A. Not -- not sure I understand 10 your question, Derrick. 11 Q. All right. Well, it might not 12 be very artfully asked. 13 Once you told them what you did, 14 did they indicate that it was any 15 different at Merchants other than the 16 way you had described the difference in 17 these? What did you call them; pick 18 slots? 19 A. Yeah. 20 MR. DYKES: Object to the form. 21 A. No. I mean, they seemed to 22 think I was -- you know, of course they 23 didn't offer me the job on the spot.</p>	<p style="text-align: right;">Page 219</p> <p>1 number it is. I didn't write that one 2 down. Somewhere around 6. 3 MR. DYKES: 6 or 7. Somewhere 4 in there. 7. 5 Q. Okay. What was previously 6 marked and entered as Defendant's 7 Exhibit 7, does that offer letter 8 contain anything that was discussed with 9 you by Hal, Andy, or Don about the job 10 or the working conditions there at 11 Merchants? 12 A. No, it does not. 13 Q. Okay. Anything specifically 14 about the company, any of the problems 15 it's having or anything like that? 16 A. No. No mention of anything 17 other than what I mentioned earlier 18 that, you know -- I went in really 19 expected -- expecting to go to work in a 20 warehouse just like SYSCO, only with the 21 Merchants name on it. I had no reason 22 to not believe that was going to be the 23 case.</p>
<p style="text-align: right;">Page 218</p> <p>1 But they liked everything they heard, 2 impressed with some of the things I had 3 to say as far as letdowns, that the 4 awards we had, you know. And we were 5 proud of that. That's something we were 6 extremely proud of and I made a point of 7 that during the interview because I was 8 proud of our accomplishments. 9 And, you know, they didn't lead 10 me to believe that I wasn't -- you know, 11 they didn't say, well, I wish you could 12 do this or I wish you could do that or I 13 wish you were better at this or better 14 at that. I mean, I left with the 15 impression that they were fully 16 impressed with me and I was definitely 17 capable of doing the job. 18 Q. During the interview, did Hal, 19 Andy, or Don ever tell you the problems 20 that they were having? 21 A. None whatsoever. 22 Q. Okay. Does the offer letter -- 23 if you'll look at it. I forget which</p>	<p style="text-align: right;">Page 220</p> <p>1 MR. BLYTHE: I got you. I think 2 we've covered everything I need. I 3 think I'm just rehashing some of what 4 Steve's already covered; if I just keep 5 beating the horse. I don't think I've 6 got anything else to ask. 7 MR. DYKES: I don't either. 8 (Whereupon, the deposition was 9 adjourned.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>

55 (Pages 217 to 220)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOODSERVICE, et al.,

Defendants.

CIVIL ACTION NO.
2:06-cv-00707-ID-CSC

DEFENDANT'S
EXHIBIT

NOTICE OF DEPOSITION AND
REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF

Please take notice that, beginning at 10:00 A.M. on April 4, 2007, defendant Merchants Foodservice will take the deposition of plaintiff Steve Adams before an officer authorized by law to administer oaths and record testimony at the office of Constangy, Brooks and Smith, LLC, 1819 Fifth Avenue North, Birmingham, Alabama 35203.

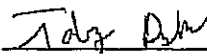
Pursuant to the Federal Rules of Civil Procedure, defendant requests that plaintiff bring the following documents with him to the deposition:

1. Any documents, writings, notes, tapes (video or audio), or correspondence which plaintiff contends support his claims.

2. Any documents, writings, notes, tapes (video or audio), or correspondence which plaintiff has that relate to or concern his employment with defendant.

3. Any and all documents, writings, notes, or correspondence reviewed by plaintiff or utilized by plaintiff to refresh his recollection in preparation for his deposition and/or the allegations in his Complaint.

4. All income tax returns filed by plaintiff for the last four years or any and all other documents or writings, including but not limited to W-2 forms, which show plaintiff's wages, earnings and hours worked for the last four years.



Thomas A. Davis (ASB-5877-S56T)

E-mail: tdavis@constangy.com

Direct Dial No.: (205) 226-5465

J. Tobias Dykes (ASB-0483-E66J)

E-mail: tdykes@constangy.com

Direct Dial No.: (205) 226-5469

CONSTANGY, BROOKS & SMITH, LLC

Suite 900, One Federal Place

1819 Fifth Avenue North

Birmingham, AL 35203

Facsimile: (205) 323-7674

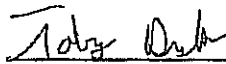
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by United States Mail, postage prepaid, and addressed as follows:

Derrick Blythe, Esq.
126 Marshall Street
Alexander City, AL 35010

This 15th day of February, 2007.



Counsel for Defendant

04/03/2007 16:12 2562342044

DERRICK BLYTHE

PAGE 07

DEFENDANT'S
EXHIBIT

2

What I am sure we can accomplish is to prove that I was lured away from a good job, (a job that I was secure in, well compensated for, a career from which I could have retired from, reaped the benefits of annual raises & the financial security of a good pension when I did retire. A job that I really enjoyed, the hours worked, the working conditions, my employees, etc... In essence, a job I could have worked at & enjoyed until retirement) under fraudulent pretense, false promises, lies & deceit. Nothing I was told during the interview or job offer turned out to be true.

I was first contacted about the position at Merchants FoodService by Freedom Search (a head hunter org.) working on behalf of Merchants. I was contacted while at work (for SYSCO). I had never entertained the idea of working anywhere but SYSCO until contacted by Freedom Search. All contacts about the Merchants job were instituted by or on behalf of Merchants. They actively pursued me to come to work for them. I agreed to an interview once Freedom told me the potential salary range and " lucrative" bonus potential. If certain CRITERIA WERE THE SAME, I thought I could better provide for my family financially if I took this position. This was the only reason I ever considered leaving SYSCO.

An interview was scheduled for me to meet with Hal Henson – Branch Manager, Andy Mercier – VP, & Don Suber – Pres. I was to meet them @ Merchants in Clanton @ 8:00 AM. When I arrived Hal greeted me and told me that Andy & Mr. Suber had been delayed and that he would conduct the interview by himself. He said if necessary, I could meet with them at a later date. During the interview (approx. 60 mins.) Hal questioned me on my experience, qualifications, etc... I answered all of his questions as thoroughly as possible, giving examples of how I had addressed certain situations in the past. I explained how at SYSCO, we did most of our let-downs on dayshift and alleviated night shift from becoming bottle-necked at the start of a shift. This was different from how Merchants was doing it and he seemed impressed at our (SYSCO's) success and cases per selection hour. I told Hal of the numerous corporate wide awards our warehouse had received at the Calera facility. Again he was impressed and said so.

Hal concluded his questions and asked if there any questions or concerns on my part. Since I was gainfully & happily employed I had prepared a short list of important questions I did need answered. The answers to these questions would be the basis for my decision if I were offered the job. I needed every assurance that I was making a sound decision if I chose to leave SYSCO.

(1ST) What hours would this job require? Hal answered my question with a question. Asked me to describe my typical day at SYSCO. I answered that I arrive for work @ 5:45, the crew @ 6:00. The crew normally finished at 2:30 – 2:45 and I was gone by 3:00. Hal's reply – so you normally work 8 to 8 ½ hours per day. Answer- Yes. Hal – that would be a typical day at Merchants. Hal also stated that given this position I would have the flexibility of scheduling my own working time. Neither came to fruition during my tenure with Merchants. From the beginning I worked 9 – 9 ½ hrs a day. Progressively Merchants became more and more demanding and my week became longer and longer. I would arrive @ 6:45 – 7:00 AM and when I would start to leave at 5:00 PM, Hal (if he saw me walking out) would say – you leaving already. I eventually started trying to stay until Hal left, even though he seldom came to work

04/03/2007 16:12 2562342044

DERRICK BLYTHE

PAGE 08

before 7:30 or 8:00. I was told on 6/28/05 (Scott Casey and Hal Henson) that if I was not willing to work 55-60 hrs / week then I was not committed enough or loyal enough to work at Merchants. That schedule would be 11-12 hrs / day. Living in Alex City, I have a 2 hr round trip commute. That plus 12 hrs a day would require me to be away from my family for 14 hrs a day, five days a week. I would never for any amount of money knowingly accept a job that required this much time. Had Hal been truthful this would have taken me out of the running for the Merchants' job. While we were discussing hours, I asked Hal about night shift and if he ever saw me needing to work at night. Hal asked if I were opposed to working night shift. I explained that I had worked all the night shift (on a regular basis) that I cared to. I stated that when I worked nights I never saw my wife or children. They would be at home while I was working, and they would be at work/school when I was home. I was upfront and told Hal that I would not be interested in a position that required any regular night shift schedule. Hal - No, no, nothing like that. All that would be necessary would be a couple of nights to get acquainted with the night shift staff and observe the night shift operation to see if there were any improvements that I could recommend. I stated that I certainly didn't have a problem with that. During my 10 ½ months of employment at Merchants I was required to work 10 complete weeks on night shift. The day I quit 7/12/05 I was told by Hal & Scott that beginning immediately I would be required to work 60 hours a week. I would work dayshift one week then nightshift the next. That would be my schedule until I was told different. I immediately informed them that I was turning in my resignation. Gave them my keys and cell phone and walked out.

Hal mentioned in the interview that I would be required to work 2 Saturdays a year for inventory. He stated that when I worked one of these Saturdays that I would receive a day off the following week as compensation. I worked a total of 8 Saturdays during my tenure and never received a single comp day for these Saturdays. Every pay check (see enclosed) I received shows 87.00 hours per pay period. I was bi - monthly (paid on 1st & 15th) so this should back up the promise of 40 hrs per week. Again, I would never have considered, much less accepted a job that required this much time per week or night shift work...**under any circumstances.**

(2ND) The next question I asked Hal had to do with vacation. I told Hal that I currently received 12 days vacation with SYSCO and that in little over a year I would receive 17 days. Hal stated that Merchants' policy was 5 days after 1 year. I stated that I would not give up 17 days to wait a year before I received any time off. Hal told me not to worry about time off. He stated that he had always (for managers) in the past and certainly would for me give me plenty of time off. He stated that after a couple of months, he would give me a couple of days to go with a weekend. After that I could have a day here and a day there. All I had to do was ask. Hal seemed so sincere and honest, I had no reason at the time not to believe him. He stated that he didn't expect any new member of his management team not to have time off for a year. During 10 ½ months I was given 0000 days off. I was turned down on all 3 requests for time off. The last time I asked off (2days) with a weekend, I was told that now was not the time to be asking off. When I stated that I hadn't had a day in 10 months, I was told that maybe I could get 1 day in August. I actually had accrued 2 vacation days at the start

04/03/2007 15:12 2562342044

DERRICK BLYTHE

PAGE 09

of 2005, (showed on my check stub), but was never allowed any time off. As previously stated, I would have never have considered a job that does not allow any time off for this length of time.

(3rd) My other concern and question was the stability of the workforce. This would weigh heavily in my decision making process. I asked Hal if Merchants had a steady, secure workforce. Hal's reply – Yes we do. We have a very good dayshift, an excellent nightshift, and a good core group of driver's. How about management was my follow up. Randy Harrington was in charge of dayshift – better at inventory control than running dayshift but all in all an excellent employee. Hal stated that the new Director of Ops would primarily be responsible for dayshift day to day and that while Randy would keep the title of ops mgr he would primarily be inventory control. Jason Kelley was the trans mgr. Started as a driver, then promo to spvr., then assumed mgr position. Philip Stitt was night mgr and Rodney Ware was spvr. Hal stated that night shift numbers were excellent and that Philip routinely maxed out on his bonus potentials. Hal further stated that Merchants had all the right pieces to the puzzle in place and that all that was needed was the glue (dir of ops) to hold them in place. I asked if Hal could tell me what had happened to the last director of operations. He said he would even though he shouldn't. He wanted me to understand that Merchants had to let him go, and that he had not resigned but was fired. Hal stated that he had been sending inappropriate e-mails to a female co-worker and had to be released. He stated that he had done a good job but had to be released for fear of Merchants being involved in a discrimination lawsuit. After accepting the job I found out that the workforce was anything but stable. Discipline was basically non existent. Turnover rate was atrocious*** See attached turnover analysis report. Both Philip and Rodney had been suspended themselves for sexual harassment. Rodney was subsequently fired for repeat offense. Philip was on the verge of being fired for absenteeism when he resigned. Night shift was a shambles. Had the stability of the work force been remotely conveyed to me with any accuracy, I would have never even considered, much less accepted this position. I would still be happily and gainfully employed with SYSCO Foods.

Hal asked if I had any other questions and I asked about the salary range. He said somewhere between 60 and 65k with a 30% bonus potential. I said that sounds good but I hope its 65 rather than 60. He said the ultimate decision would lie with the right candidate's qualifications and Andy and Mr. Suber. I said well that's all I've got. Hal asked if I would excuse him for just a second and that he would be right back. I said sure. When he returned he said that Andy and Mr. Suber were on their way and that they would really like to talk to me today if possible. I explained that I had taken a vacation day from SYSCO and that I could hang around until they got there. He said it would probably be about 45 min to an hour and suggested that I could go get a snack down the road. I asked if he could take me on a tour of the warehouse and meet the guys that were there that day. Hal stated that he would prefer not to do that just yet. He said that no one had been told that they were hiring a new director and it would be better to wait until after the announcement. I said I understood. After I was hired I then

04/03/2007 16:12

2562342044

DERRICK BLYTHE

PAGE 10

realized the real reason he didn't want me to see the facility. Although it was newer than the SYSCO facility (in Calera) that was built in 1998, it was a mess. I have never seen a nastier facility. This would have been a dead give away as to the mismanagement and lack of care and pride on the part of the employees.

When I returned from my break, Hal met me and escorted me back to the conference room. I met Andy Mercier and Don Suber at this time. After pleasantries were exchanged, Hal filled them in on my experience, present employment, and opened the floor for their questions. Mr. Suber asked about my experience with KFC (knowing that SYSCO had once held the contract to service all KFC accounts). I stated that I had the knowledge of participating in the whse inspections, the record keeping process that KFC requires of its vendors, etc...Most of my knowledge dealt with dayshift ops. He mentioned that Merchants was on a short list to become their next supplier and that they wanted to land and keep this large account. (Merchants had recently sought a similar account with the U S military. I knew this because SYSCO Alabama had also interviewed and been awarded this contract instead of Merchants). Mr. Suber seemed pleased that I indeed had KFC experience. His next statement was a comment rather than a question. He wanted my assurance that I was 100% anti-union. Andy asked about my experience with HACCP - (hazard analysis & critical control points - safe handling procedures for fresh seafood & meat products). He was happy to hear that I was currently HACCP certified. Next Andy asked me how I liked working for SYSCO. I told him that they were a great company and that I really enjoyed working there. He questioned me about the amount of pressure exerted on management by the "Corporate driven mandate" that all SYSCO houses operated under. He stated that I would really enjoy working for Merchants, because unlike SYSCO and their corporate mandate, Merchants was extremely family oriented. He said that Merchants realizes the value an employee places on their family and the need to spend time with them. An employee needs security in their employment and peace of mind while at work. Yes, we expect our employees to do their best, but we don't put undue demands or put pressure on our employees to get our desired results. For some reason Andy thought SYSCO's work environment was extremely high pressure and he went out of his way to convince me that Merchants was not that way. I again stated that was not the case, at least not in my experience with the ops. dept. where I worked. I stated that it might be that way in sales or marketing but not in operations. I told him that I had a great boss in Eddie O'Conor. I've never felt pressured or driven by any mandate, but did tell him that we had been extremely successful in distinguishing ourselves as one of the best operating warehouses in all of SYSCO. But if Merchants is very family oriented, then that can only be a positive. Again, he assured me that was the case.

As mentioned in several examples above Merchants could have cared less about my family or the quality of the life we had together. All they were concerned with was somehow turning a mess of a company around at any cost to any and all employees. After accepting this position I had many conversations with Andy about the management team at the Clanton facility. He told me on numerous occasions that if Randy, Jason, or Philip were not the right man for the job, "fire them" and hire someone who is. Andy concluded by saying that Merchants had all the right people in

04/03/2007 16:12 2562342044

DERRICK BLYTHE

PAGE 11

place & that they just needed a strong leader to keep everyone headed in the right direction. Amazingly similar to what Hal had said just a couple of hours earlier. At the time I thought this was just coincidental, but after accepting the job and seeing what I had stepped into, I believe that the whole interview had been orchestrated in advance. I believe Merchants was desperate to hire a director who they thought could straighten out all the problems that were prevalent at the Clanton facility. I believe they thought that hiring a SYSCO guy would somehow miraculously solve all their problems. Every time I was introduced during my first few weeks of employment, Hal or Andy (whoever was making the introduction) would always say he's from SYSCO and he's going to have us running just like them in no time. This was really stressed at the first monthly sales meeting I attended. Sales people peppered Hal with constant problems of mis-picks and items short on orders. Hal introduced me as the guy from the "Evil Empire" then laughed and said but they do do it right and now so will we. When I was introduced to Mr. Tatum (principal owner), Andy said this is the guy we hired away from SYSCO.

Interview Concluded with handshakes, thanks, and we will be in touch after interviewing one more candidate. Hal called a few days later with a job and salary offer. \$62.5k plus 30% bonus potential. I asked if I could have a few days to discuss and think it over. Hal agreed but asked me to do it quickly. I said I would let him know on Monday after the weekend. Laura and I discussed this for hours on end and ultimately decided based on all that I had been told that this was indeed a great offer for me. It would provide me with even more financial security and opportunities to better provide for my family. So I did the hardest thing I've done in my working career and said goodbye to SYSCO (See attached letter of resignation and exit interview) and accepted the job at Merchants.

04/03/2007 15:21 2562342044

DERRICK BLYTHE

PAGE 13

~~Never~~ ~~Security~~ ~~Ident~~—protect your Social Security number

Your Social Security Statement

**DEFENDANT'S
EXHIBIT**

Prepared especially for Charles S. Adams

July 13, 2005

S0 R 0192

000551278 01 AT 0.292

CHARLES S. ADAMS

See inside for your personal information →

ALEX CITY AL

What's inside ...

- ▼ Your Estimated Benefits 2
 - ▼ Your Earnings Record 3
 - ▼ Some Facts About Social Security 4
 - ▼ If You Need More Information 4
 - ▼ To Request This Statement In Spanish 4
- (Para Solicitar Una Declaración en Español)

What Social Security Means to You

This *Social Security Statement* will help you understand what Social Security means to you and your family. This *Statement* can help you better plan for your financial future. It gives you estimates of your Social Security benefits under current law. Each year, we will send you an updated *Statement* including your latest reported earnings.

Be sure to read this *Statement* carefully. If you think there may be a mistake, please let us know. That's important because your benefits will be based on our record of your lifetime earnings. We recommend you keep a copy of this *Statement* with your financial records. **Social Security is for people of all ages ...**

It can help you whether you're young or old, male or female, single or with a family. It's there for you when you retire, but it's more than a retirement program. Social Security also can provide benefits if you become disabled and help support your family when you die.

Work to build a secure future ...

Social Security is the largest source of income for most elderly Americans today. It is very important to remember that Social Security was never intended to be your only source of income when you retire. Social Security can't do it all. You also will need other savings, investments, pensions or retirement accounts to make sure you have enough money to live comfortably when you retire.

About Social Security's future ...

Social Security is a compact between generations. For more than 60 years, America has kept the promise of security for its workers and their families. But now, the Social Security system is facing serious future financial problems, and action is needed soon to make sure that the system is sound when today's younger workers are ready for retirement.

Today there are almost 36 million Americans age 65 or older. Their Social Security retirement benefits are funded by today's workers and their employers who jointly pay Social Security taxes — just as the money they paid into Social Security was used to pay benefits to those who retired before them. Unless action is taken soon to strengthen Social Security, in just 12 years we will begin paying more in benefits than we collect in taxes. Without changes, by 2041 the Social Security Trust Fund will be exhausted.* By then, the number of Americans 65 or older is expected to have doubled. There won't be enough younger people working to pay all of the benefits owed to those who are retiring. At that point, there will be enough money to pay only about 74 cents for each dollar of scheduled benefits. We will need to resolve these issues soon to make sure Social Security continues to provide a foundation of protection for future generations as it has done in the past.

Social Security On The Net ...

Visit www.socialsecurity.gov on the Internet to learn more about Social Security. You can read our publications, use the *Social Security Benefit Calculators* to calculate future benefits, apply for retirement, spouse's or disability benefits, or subscribe to *eNews* for up-to-date information about Social Security.

*James B. Barnhart*Jo Anne B. Barnhart
Commissioner

* These estimates of the future financial status of the Social Security program were produced by the actuaries at the Social Security Administration based on the intermediate assumptions from the Social Security Trustees' Annual Report to the Congress.

04/03/2007 16:21 2562342044

DERRICK BLYTHE

PAGE 14

Your Estimated Benefits

To qualify for benefits, you earn "credits" through your work — up to four each year. This year, for example, you earn one credit for each \$920 of wages or self-employment income. When you've earned \$3,680, you've earned your four credits for the year. Most people need 40 credits, earned over their working lifetime, to receive retirement benefits. For disability and survivors benefits, young people need fewer credits to be eligible.

We checked your records to see whether you have earned enough credits to qualify for benefits. If you haven't earned enough yet to qualify for any type of benefit, we can't give you a benefit estimate now. If you continue to work, we'll give you a benefit estimate when you do qualify.

What we assumed — If you have enough work credits, we estimated your benefit amounts using your average earnings over your working lifetime. For 2005 and later (up to retirement age), we assumed you'll continue to work and make about the same as you did in 2003 or 2004. We also included credits we assumed you earned last year and this year.

We can't provide your actual benefit amount until you apply for benefits. **And that amount may differ from the estimates stated below because:**

- (1) Your earnings may increase or decrease in the future.
- (2) Your estimated benefits are based on current law. **The law governing benefit amounts may change.***
- (3) Your benefit amount may be affected by **military service, railroad employment or pensions earned through work on which you did not pay Social Security tax. Visit www.socialsecurity.gov/mystatement to see whether your Social Security benefit amount will be affected.**

Generally, estimates for older workers are more accurate than those for younger workers because they're based on a longer earnings history with fewer uncertainties such as earnings fluctuations and future law changes.

These estimates are in today's dollars. After you start receiving benefits, they will be adjusted for cost-of-living increases.

- ▼ ***Retirement** You have earned enough credits to qualify for benefits. At your current earnings rate, if you stop working and start receiving benefits...
 - At age 62, your payment would be about \$ 1,202 a month
 - If you continue working until...
 - your full retirement age (66 and 8 months), your payment would be about .. \$ 1,738 a month
 - age 70, your payment would be about \$ 2,247 a month
- ▼ ***Disability** You have earned enough credits to qualify for benefits. If you become disabled right now...
 - Your payment would be about \$ 1,480 a month
- ▼ ***Family** If you get retirement or disability benefits, your spouse and children also may qualify for benefits.
- ▼ ***Survivors** You have earned enough credits for your family to receive the following benefits if you die this year.
 - Your child \$ 1,152 a month
 - Your spouse who is caring for your child \$ 1,152 a month
 - Your spouse who reaches full retirement age \$ 1,536 a month
 - Total family benefits cannot be more than \$ 2,687 a month

Your spouse or minor child may be eligible for a special one-time death benefit of \$255.
- ▼ ***Medicare** You have earned enough credits to qualify for Medicare at age 65. Even if you do not retire at age 65, be sure to contact Social Security three months before your 65th birthday to enroll in Medicare.

***Your estimated benefits are based on current law. Congress has made changes to the law in the past and can do so at any time. The law governing benefit amounts may change because, by 2041, the payroll taxes collected will be enough to pay only about 74 percent of scheduled benefits.**

We based your benefit estimates on these facts:

Your date of birth 1958
 Your estimated taxable earnings per year after 2004 \$67,874
 Your Social Security number (only the last four digits
 are shown to help prevent identity theft) XXX-XX-1240

Help Us Keep Your Earnings Record Accurate

You, your employer and Social Security share responsibility for the accuracy of your earnings record. Since you began working, we recorded your reported earnings under your name and Social Security number. We have updated your record each time your employer (or you, if you're self-employed) reported your earnings.

Remember, it's your earnings, not the amount of taxes you paid or the number of credits you've earned, that determine your benefit amount. When we figure that amount, we base it on your average earnings over your lifetime. If our records are wrong, you may not receive all the benefits to which you are entitled.

▼ **Review this chart carefully** using your own records to make sure our information is correct and that we've recorded each year you worked. You're the only person who can look at the earnings chart and know whether it is complete and correct.

Some or all of your earnings from **last year** may not be shown on your *Statement*. It could be that we still were processing last year's earnings reports

when your *Statement* was prepared. Your complete earnings for last year will be shown on next year's *Statement*. **Note:** If you worked for more than one employer during any year, or if you had both earnings and self-employment income, we combined your earnings for the year.

▼ **There's a limit on the amount of earnings on which you pay Social Security taxes each year.** The limit increases yearly. Earnings above the limit will not appear on your earnings chart as Social Security earnings. (For Medicare taxes, the maximum earnings amount began rising in 1991. Since 1994, **all** of your earnings are taxed for Medicare.)

▼ **Call us right away at 1-800-772-1213** (7 a.m.-7 p.m. your local time) if any earnings for years **before last year** are shown incorrectly. If possible, have your W-2 or tax return for those years available. (If you live outside the U.S., follow the directions at the bottom of Page 4.)

Your Earnings Record at a Glance

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings	Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1975	\$ 873	\$ 873	1990	\$ 14,180	\$ 14,180
1976	2,156	2,156	1991	18,194	18,194
1977	3,596	3,596	1992	20,800	20,800
1978	4,380	4,380	1993	21,560	21,560
1979	5,164	5,164	1994	25,510	25,610
1980	6,689	6,689	1995	29,950	29,950
1981	11,801	11,801	1996	31,710	31,710
1982	10,904	10,904	1997	33,610	33,610
1983	11,574	11,574	1998	35,170	35,170
1984	12,085	12,085	1999	45,373	45,373
1985	13,018	13,018	2000	53,773	53,773
1986	14,907	14,907	2001	50,726	50,726
1987	22,818	22,818	2002	54,872	54,872
1988	23,023	23,023	2003	57,141	57,141
1989	20,668	20,668	2004	67,874	67,874

Total Social Security and Medicare taxes paid over your working career through the last year reported on the chart above:
Estimated taxes paid for Social Security: **Estimated taxes paid for Medicare:**

You paid: \$43,923 You paid: \$10,298
 Your employers paid: \$43,923 Your employers paid: \$10,298

Note: You currently pay 6.2 percent of your salary, up to \$90,000, in Social Security taxes and 1.45 percent in Medicare taxes on your entire salary. Your employer also pays 6.2 percent in Social Security taxes and 1.45 percent in Medicare taxes for you. If you are self-employed, you pay the combined employee and employer amount of 12.4 percent in Social Security taxes and 2.9 percent in Medicare taxes on your net earnings.

Some Facts About Social Security

About Social Security and Medicare...

Social Security pays retirement, disability, family and survivors benefits. Medicare, a separate program run by the Centers for Medicare and Medicaid Services, helps pay for inpatient hospital care, nursing care, doctors' fees and other medical services and supplies to people age 65 and older, or to people who have been receiving Social Security disability benefits for two years or more. Your Social Security covered earnings qualify you for both programs. For more information about Medicare, visit www.medicare.gov or call 1-800-633-4227 (TTY 1-877-486-2048 if you are deaf or hard of hearing).

Here are some facts about Social Security benefits:

- ▼ **Retirement** — If you were born before 1938, your full retirement age is 65. Because of a 1983 change in the law, the full retirement age will increase gradually to 67 for people born in 1960 or later. Some people retire before their full retirement age. You can retire as early as age 62 and take your benefits at a reduced rate. If you continue working after your full retirement age, you can receive higher benefits because of additional earnings and special credits for delayed retirement.
- ▼ **Disability** — If you become disabled before full retirement age, you can receive disability benefits after six months if you have:
 - enough credits from earnings (depending on your age, you must have earned six to 20 of your credits in the three to 10 years before you became disabled); and
 - a physical or mental impairment that's expected to prevent you from doing "substantial" work for a year or more or result in death.
- ▼ **Family** — If you're eligible for disability or retirement benefits, your current or divorced spouse, minor children or adult children disabled before age 22 also may receive benefits. Each may qualify for up to about 50 percent of your benefit amount. The total amount depends on how many family members qualify.
- ▼ **Survivors** — When you die, certain members of your family may be eligible for benefits:
 - your spouse age 60 or older (50 or older if disabled, or any age if caring for your children younger than age 16); and
 - your children if unmarried and younger than age 18, still in school and younger than 19 years old, or adult children disabled before age 22.
 If you are divorced, your ex-spouse could be eligible for a widow's or widower's benefit on your record when you die.

Receive benefits and still work...

You can continue to work and still get retirement or survivors benefits. If you're younger than your full retirement age, there are limits on how much you can earn without affecting your benefit amount. The limits change each year. When you apply for benefits, we'll tell you what the limits are at that time and whether work would affect your monthly benefits. When you reach full retirement age, the earnings limits no longer apply.

Before you decide to retire...

Think about your benefits for the long term. Everyone's situation is different. For example, be sure to consider the advantages and disadvantages of early retirement. If you choose to receive benefits before you reach full retirement age, your benefits will be permanently reduced. However, you'll receive benefits for a longer period of time.

To help you decide when is the best time for you to retire, we offer a free booklet, *Social Security — Retirement Benefits* (Publication No. 05-10035), that provides specific information about retirement. You can calculate future retirement benefits on our website at www.socialsecurity.gov by using the *Social Security Benefit Calculators*. There are other free publications that you may find helpful, including:

- ▼ *Understanding The Benefits* (No. 05-10024) — a general explanation of all Social Security benefits;
- ▼ *How Your Retirement Benefit Is Figured* (No. 05-10070) — an explanation of how you can calculate your benefit;
- ▼ *The Windfall Elimination Provision* (No. 05-10045) — how it affects your retirement or disability benefits;
- ▼ *Government Pension Offset* (No. 05-10007) — explanation of a law that affects spouse's or widow(er)'s benefits; and
- ▼ *Identity Theft And Your Social Security Number* (No. 05-10064) — what to do if you're a victim of identity theft.

We also have other leaflets and fact sheets with information about specific topics such as military service, self-employment or foreign employment. You can request Social Security publications at www.socialsecurity.gov or by calling us at 1-800-772-1213.

If you need more information—Visit www.socialsecurity.gov/mystatement on the Internet, contact any Social Security office, call 1-800-772-1213 or write to Social Security Administration, Office of Earnings Operations, P.O. Box 33026, Baltimore, MD 21290 3026. If you're deaf or hard of hearing, call TTY 1-800-325-0778. If you have questions about your personal information, you must provide your complete Social Security number. If your address is incorrect on this *Statement*, ask the Internal Revenue Service to send you a Form 8822. We don't keep your address if you're not receiving Social Security benefits.

Para solicitar una Declaración en español, llame al 1-800-772-1213

04/03/2007 16:21 2562342044

DERRICK BLYTHE

PAGE 12



SYSKO FOOD SERVICES
OF CENTRAL ALABAMA
1000 SYSKO DRIVE
CALERA, AL 35040

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 1
AL:

Social Security Number: [REDACTED]

Earnings	rate	hours	this period
Vacation		16.00	397.17
Regular			
Bonus			

Gross Pay: 397.17

Deductions	Statutory	Other	year to date
Federal Income Tax	-15.19		4,587.86
Social Security Tax	-24.62		2,844.06
Medicare Tax	-5.76		665.14
AL State Income Tax	-14.82		1,912.47
Direct Deposit	-305.01		
401K % Matched	-23.83*		2,287.83
401K(Unmatched)	-7.94*		205.96
A D & D Ins			65.90
Net Pay			\$305.01

* Excluded from federal taxable wages
Your federal taxable wages this period are \$365.40

Earnings Statement

Period Ending: 09/04/2006
Pay Date: 09/10/2006

ADP
DEFENDANT'S
EXHIBIT

4

CHARLES S ADAMS

ALEXANDER CITY, AL

Other Benefits and Information	this period	total to date
Group Term Life		44.89
Float Balance		8.00
Vacation Bal		0.00

LAST CHECK - SYSKO
FOR 2 DAYS
VACATION

⊗ - Bonus NOT
INCLUDED IN SALARY

EXPONUMENT - ONLY USED BASE SALARY

SYSKO FOOD SERVICES
OF CENTRAL ALABAMA
1000 SYSKO DRIVE
CALERA, AL 35040

Advice number: 00000370281
Pay date: 09/10/2006

Deposited to the account of
CHARLES S ADAMS

account number: 91633
transit ABA: 2622 8551
amount: \$305.01

THIS IS NOT A CHECK

NON-NEGOTIABLE

04/03/2007 16:21 2562342044

DERRICK BLYTHE

PAGE 08

**DEFENDANT'S
EXHIBIT**

5

1 Wages, tips, other comp. 55118.54		2 Federal income tax withheld 7589.46	
3 Social security wages 55812.32		4 Social security tax withheld 3460.36	
5 Medicare wages and tips 55812.32		6 Medicare tax withheld 809.28	
a Control number 026546 15/M8P	Dept. 431001	Comp. A	Employer use only 6
c Employer's name, address, and ZIP code RUSSELL LANDS INC & SUBSIDIARY 2544 WILLOW POINT ROAD ALEXANDER CITY AL 36010-6218			
b Employer's FED ID number 63-0455382	d E number 1240		
7 Social security tips	8 Allocated tips		
9 Advance EIC payment	10 Dependent care benefits		
11 Nonqualified plans	12a See instructions for box 12 D 695.78		
14 Other	12b 12c 12d 13 State unemployment tax (for party sick pay) X		
e1 Employee's name, address and ZIP code STEVE ADAMS ALEXANDER CITY, AL			
16 State AL 058397	Employer's state ID no.	16 State wages, tips, etc. 55118.54	
17 State income tax 1940.80	18 Local wages, tips, etc.		
19 Local income tax	20 Locality name		
Federal Filing Copy W-2 Wage and Tax Statement 2006 Copy B to be filed with employee's Federal income tax return.			

Form W-2 Wages and Tax Statement

This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty/other sanction may be imposed on you if this income is taxable and you fail to report it.

Dept. of the Treasury - IRS

04/03/2007 16:21 2552342044

DERRICK BLYTHE

PAGE 18

1 Wages, tips, other comp. 8960.39		2 Federal income tax withheld 690.38	
3 Social security wages 8960.39		4 Social security tax withheld 555.54	
5 Medicare wages and tips 8960.39		6 Medicare tax withheld 129.93	
a Control number 028546	bapt 15/MBP	Corp. 431001	Employer use only A 5
c Employer's name, address, and ZIP code RUSSELL LANDS INC & SUBSIDIARY 2544 WILLOW POINT ROAD ALEXANDER CITY AL 35010-8218			
b Employer's FED ID number 83-0455398			
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12	
14 Other		12b	
2005		12c	
		12d	
13 Statutory (incl. plan and party sick pay)			
e/f Employee's name, address and ZIP code STEVE ADAMS ALEXANDER CITY, AL 35010			
15 State AL	Employer's state ID no. 058397	16 State wages, tips, etc. 8960.39	
17 State income tax 278.30		18 Local wages, tips, etc.	
19 Local income tax		20 Locality name	
Federal Filing Copy, 2005 W-2 Wage and Tax Statement Copy D to be filed with employee's Federal income tax return.			

Copy B To Be Filed With Employee's Federal Tax Return		2005 OMB No. 1545-0008	
a Control number 15908	1 Wages, tips, other comp. 34833.00	2 Federal income tax withheld 4099.05	
b Employer ID number (EIN) 64-0202800	3 Social security wages 34833.00	4 Social security tax withheld 2159.65	
	5 Medicare wages and tips 34833.00	6 Medicare tax withheld 505.08	
c Employer's name, address, and ZIP code MERCHANTS FOODSERVICE 1100 EDWARDS STREET P.O. BOX 1351 HATTIESBURG, MS 39403-1351			
e Employee's name, address, and ZIP code CHARLES S ADAMS ALEXANDER CITY, AL 35010 2005			
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a Code See inst. for box 12	
13 Statutory employee		14 Other	
Retirement plan X		12b Code	
Third-party sick pay		12c Code	
		12d Code	
AL 197494	34833.00	1411.24	
15 State Employer's state I.D. #	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement
This information is being furnished to the Internal Revenue Service

Dept. of the Treasury - IRS

04/03/2007 15:21 2562342044

DERRICK BLYTHE

PAGE 11

1 Wages, tips, other comp. 54618.94		2 Federal income tax withheld 5893.74	
3 Social security wages 57141.80		4 Social security tax withheld 3542.78	
5 Medicare wages and tips 57141.60		6 Medicare tax withheld 828.55	
a Control Number 000135 70/5B1	Dept 707210	Comp. A	Employer use only 806
c Employer's name, address, and ZIP code SYSCO FOOD SERVICES OF CENTRAL ALABAMA 1000 SYSCO DRIVE CALERA AL 35040 <i>2003</i>			
b Employer's FED ID number 75-0527338			
7 Social security tips		8 Allocated tips	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12 C 59.40	
14 Other		12b D 2522.65	
		12c	
		12d	
		13 See emp. Ret. plan for party who pay X	
4f Employee's name, address and ZIP code CHARLES S ADAMS ALEXANDER CITY, AL 35010			
15 State Employer's state ID no. AL 359516		16 State wages, tips, etc. 54618.94	
17 State income tax 2372.12		18 Local wages, tips, etc.	
19 Local income tax		20 Locality name	
Federal Filing Copy W-2 Wage and Tax Statement 2003 Copy B to be filed with employee's Federal Income Tax Return. Form No. 1040-0001			

DEFENDANT'S
EXHIBIT

THE MERCHANTS COMPANY APPLICATION FOR EMPLOYMENT

(The Merchants Company is an Equal Opportunity Employer)

1. This application must be completed by the applicant.
2. All Questions must be fully answered.

(STEVE)

Your Name In Full: ADAMS CHARLES STEVEN
(Last) (First) (Middle)

Telephone #: _____ Social Security # 1240
(Day) (Night)

Address: ALEXANDER CITY, AL.
(Street Address) (City) (State) (Zip Code)

Please Note: The fact that you have been asked to complete this detailed application indicates our interest in your qualifications. You can aid us in making a fair appraisal of those qualifications by answering each questions as accurately as possible. We assure you that this application will be considered a confidential record.

Are you at least 18 years old? ☒ Yes () No

Are you eligible to be employed in the United States? ☒ Yes () No

How do you plan to get to work? PERSONAL VEHICLE

Have you ever been convicted of a crime other than a minor traffic violation: () Yes ☒ No

If so, please give the details, including dates, location and circumstances: _____

How many days have you missed from scheduled work during the past two years? 1

If you are employed by The Merchants Company, will you work a second job at any time? () Yes ☒ No

If so, detail: _____

Do you have any relatives, friends, or acquaintances employed with The Merchants Company, if so, please list their names and department working in below: NO

In case of an emergency, who will always know how to get in touch with you (give name, address, and telephone number):

LAURA ADAMS (WIFE)

ALEXANDER CITY, AL

Position applied for: OPERATIONS MANAGER

Do you want to work full time? YES Or part time? _____

When hired, on what date will you be available to start work? 2 WEEKS NOTICE Rate of Pay Expected? OPEN

What made you decide to work with The Merchants Company? OPPORTUNITY FOR GROWTH WITH A WELL ESTABLISHED INDUSTRY LEADER

Have you ever worked for The Merchants Company before? () Yes (✓) No. If so, when and why did you leave?

Do you have any special circumstances which might prevent you from working all scheduled work and overtime including weekends? () Yes (✓) No. If so, please detail:

Do you have any special skills or experience which would make you more qualified to work for The Merchants Company than other applicants? (X) Yes () No. If so, please detail: ALMOST 14 YEARS MGMT EXPERIENCE IN FOOD SERVICE OPERATIONS

INSTITUTION	NAME & LOCATION OF SCHOOL	NUMBER OF YEARS ATTENDED	COURSES TAKEN	DEGREES ACQUIRED
Grade School	ALEX CITY MIDDLE ALEX CITY, AL	3		XXXXXXXX
High School	BENJAMIN RUSSELL ALEX CITY, AL	3		XXXXXXXX
College	CENTRAL ALABAMA	2		ASSOC.
	FALLNER UNIVERSITY MONTGOMERY, AL	2		BACHELOR
Other Training				XXXXXXXX

Did you work outside of school hours? () Yes () No Describe:

Do you attend school now? () Yes (✓) No If not, do you intend to? () Yes () No so, when?

Employment: Please list all previous employment and begin by listing your last or present employment first.
(IF MORE SPACE IS NEEDED, PLEASE USE BACK OF APPLICATION FORM)

EMPLOYMENT DATE FROM TO	Company Name & Location & Immediate Supervisor's Name	Give Your Title & Specific Duties of Position	Rate of Pay	Reason for Leaving
12-98 PRESENT	SYSCO FOOD - CHALM KENNY BOWMAN	WARE SUPVR		CURRENTLY EMPLOYED
2-91 12-98	ALABAMA FOOD GROUP ALEX CITY, AL	OPERATIONS MGR		EMPLOYMENT WITH SYSCO
	LAUGHLIN NEIGHBORS III			

Unemployment: Account for all unemployed time of two months or more after leaving school and between positions held.

UNEMPLOYMENT DATES FROM TO:		STATE WHAT YOU WERE DOING	PERSONAL REFERENCE WHO CAN VERIFY THIS INFORMATION: NAME AND ADDRESS

Have you ever served in the Armed Forces of the U.S.? () Yes ☒ No If so:

Branch of service: _____ From: _____ to: _____

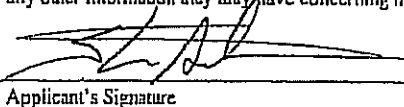
Rank or rating: _____

Reason for leaving the Armed Forces: _____

References (Other than relatives or former employers):

Name	Address	Occupation	Years Known
1. HELEN MARTIN	1713 PINEY BURN DR ALEX CITY, AL	RETIRED.	45
2. BOBBY SCOTT	ELKHART CIRCLE RD ALEX CITY, AL	OWNER - SCOT ACCOUNTANT	25
3. HOWARD BISHOP	HWY 22 W ALEX CITY, AL	INDUSTRIAL ENGINEER	31

I represent that each answer to a question in this application and all other information otherwise furnished is true and correct. I further represent that such answers and information constitute a full and complete disclosure of my knowledge with respect to the question or subject to which the answer or information relates. I understand that any incorrect, incomplete, or false statement or information furnished by me will subject me to discharge at any time, in the event that I am employed by The Merchants Company. I agree to abide by all its orders, rules, and regulations, and agree not to disclose any confidential information regarding operating and trade secrets. I authorize my former employers to give any information regarding my employment with them, and in addition, to furnish any other information they may have concerning me.



Applicant's Signature

8-11-04

Date

THANK YOU for completing this application form and for your interest in employment with The Merchants Company. We would like to assure you that your opportunity for employment with The Merchants Company would be based only on your merit without regard to race, creed, color, religion, sex, age, national origin, or handicap/disabled status. In particular, we wish to note that, although we have asked you for information on your age, we conform to all laws prohibiting discrimination. To be kept active, this application must be renewed every sixty days from the date completed.



MERCHANTS FOODSERVICE

Serving Your Favorite Restaurants!

Post Office Box 2096
Clanton, AL 35046
(800) 844-0633 Fax: (205) 280-1748

**DEFENDANT'S
EXHIBIT**

7

August 20, 2004

Steve Adams
Alexander City, AL

Dear Steve:

I enjoyed having you visit our Clanton Distribution Center and am pleased that you took the time to do so. Without exception, each of the individuals with whom you spoke during your visit feel that you will do very well at Merchants Foodservice. I hope you found your visit interesting and worthwhile, and you were able to gather the information you desired about Merchants Foodservice, our potential and how it matches your individual goals.

I am pleased to extend you an offer to join our company as Operations Manager of the Clanton Distribution Center. Your annualized salary will be \$62,500. In addition to your base salary, you will be eligible for up to a 30% bonus based on improving sales and improving current operational and productivity standards. Our incentive program recognizes the personal sacrifice and commitment involved in providing leadership and the necessary supervision to improve on current standards. Bonuses are paid three times a year within 30 days after physical inventory.

The Company offers a benefits program which in addition to the usual holidays, includes vacation days, group health and dental insurance, life insurance, short term and long term disability plan, pension plan and a matching 401(K) plan.

When you combine our starting salary, bonus program and benefits package, I think you'll agree we offer a very attractive financial package.

We are very interested in having you join us for what we hope will be a long and successful career. Your future professional development should parallel with the development and expansion of Merchants Foodservice.

Mr. Steve Adams
August 20, 2004
Page Two



MERCHANTS FROSTY ACRES
FOODSERVICE
Serving Your Favorite Restaurants!

Post Office Box 2096
Clanton, AL 35046
(800) 844-0633 Fax: (205) 280-1748

As you consider this offer, keep in mind that Merchants Foodservice is a family owned company offering you a personal relationship with your employer while offering the growth of a much larger corporation.

Steve, I sincerely hope you will decide to join us and look forward to hearing from you in the near future regarding your decision. If you have any further questions or desire additional information about Merchants Foodservice or the benefits we offer, please call me at (205) 280-1710.

Very truly yours,

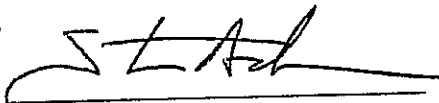
MERCHANTS FOODSERVICE

Hal Henson
General Manager
Clanton Distribution Center

HH/mra

TO INDICATE ACCEPTANCE of our offer, please sign and date the attached copy of this letter and return in the enclosed envelope.

I accept your offer as outlined above.


STEVE ADAMS
8-23-04
DATE

04/03/2007 16:21 2562342044

DERRICK BLYTHE

PAGE 87

**DEFENDANT'S
EXHIBIT**

8



SYSCO Food Service of Central Alabama

EXIT INTERVIEW

It is our company policy to conduct an exit interview with each employee upon separation. We would appreciate your honest opinions about your employment with our company. Your objective feedback can help us to improve workplace conditions and make this company a better place to work for. Please complete the last page of this questionnaire and attach it to the questionnaire. Thank you for your valued opinion.

Employee Name: STEVE ADAMS Separation Date: 9-24-04
 Position Title: MANAGER, HOUSE SUBUR Day: PERMANENT

Circle which best describes your feelings about the following aspects of your employment experience at our company.

	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied
Nature of the job	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Performance of job and experience	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Performance appraisal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Training, educational and development program	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Opportunities for advancement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Salary/benefits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervision	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Company policies	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Workload	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Relaxation program	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall, is it a place to work	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you have marked dissatisfied or very dissatisfied please explain why.

The main reason I am leaving this company is: PERMANENT PROMOTION - ALLIANCE
WAS TO ENTER PHASE FOURTHLY FOR MY FAMILY

If you are leaving to accept other employment, please list the new employer's name, the title of your new position, your starting salary and any benefits that you will be receiving that you did not receive at our company. PERMANENT PROMOTION - ALLIANCE
PERMANENT PROMOTION - ALLIANCE
PERMANENT PROMOTION - ALLIANCE

If you are leaving to accept other employment, describe how your new position will be different from the job you held in our company. PERMANENT PROMOTION - ALLIANCE
PERMANENT PROMOTION - ALLIANCE
PERMANENT PROMOTION - ALLIANCE

Please describe your relationship with your supervisor and how it could be improved, if at all. NO IMPROVEMENT
NEEDS FOR IMPROVEMENT - REALLY ENJOYED WORKING
LISTEN AND FOR NEWER EMPLOYEES

Has our company satisfied your experience provided enough recognition for your work achievement? If not, please describe how you would have preferred to have been recognized.

Would you recommend this company as a place to work? Yes ☒ No ☐ If not, why?

Employee Signature: STEVE ADAMS Date: 9-23-04

LEAVING SYSCO WITH THE HIGHEST RESPECTS FOR EVERYONE TO MAKE
 REALLY CARE FOR ALL MY CO-WORKERS (SYSCO FAMILY), SYSCO
 IS A GREAT PLACE TO WORK. THANKS EVERYONE FOR
 EVERYTHING.

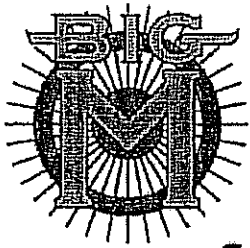
AUGUST 23, 2004

EMER, DOLL, KENNY

I WOULD LIKE TO THANK
 EACH OF YOU FOR THE OPPORTUNITY
 YOU GAVE ME ALMOST 6 YEARS
 AGO WHEN YOU Hired ME TO WORK
 FOR SYSCO FOOD SERVICES OF CENTRAL
 ALABAMA. I HAVE REALLY ENJOYED
 WORKING WITH YOU AND FOR YOU
 OVER THAT PERIOD OF TIME. IT'S
 ALWAYS NICE TO LEAVE SOMETHING
 YOU REALLY CARE ABOUT, AND I
 DO REALLY CARE ABOUT MY SYSCO
 FAMILY. EACH OF YOU HAS BEEN
 ROCK SOLID, GOOD AS GOLD, TO ME
 AND I APPRECIATE THAT. HOWEVER,
 I'VE BEEN OFFERED AN OPPORTUNITY
 WITH ANOTHER COMPANY, AND AFTER
 MUCH CONSIDERATION AND PRAYER HAVE
 DECIDED IT'S TIME FOR ME TO
 MOVE ON. PLEASE ACCEPT THIS
 LETTER AS MY NOTICE OF RESIGNATION
 EFFECTIVE 9-7-04. MAY GOD
 CONTINUE TO BLESS EACH AND EVERY-
 ONE OF YOU HERE AT SYSCO.

Sincerely,

Steve Adams



MERCHANTS FOODSERVICE

Serving Your Favorite Restaurants!

To: New Employees
From: Human Resources
Subject: Benefits

**DEFENDANT'S
EXHIBIT**

9

PERSONNEL FILES: These files are kept in the Hattiesburg Office. If there is a change in your marital status, number of dependents, address, telephone number, insurance beneficiary or legal name, please notify the Human Resource Department in writing.

VACATION: Vacation benefits are as follows: 5 days after January 1st of the first full year, 10 days after 3 years, and 15 days after 15 years. Vacation time does accrue the first month you are employed and you will be eligible to take vacation time on or after January 1st following date of employment.

HOLIDAYS: Merchants Foodservice observes the following holidays:

New Years Day (January 1)
Memorial Day (Last Monday in May)
Independence Day (July 4)
Thanksgiving (Fourth Thursday in November)
Christmas (2 days – to be scheduled by supervisor)

BEREAVEMENT: Merchants Foodservice does grant 2 days bereavement leave in case of death in the immediate family. See handbook for definition of "immediate family."

LIFE INSURANCE (HM Life Insurance Co.): You automatically have a life insurance policy with Merchants Foodservice after you have been employed 30 days. Merchants Foodservice pays the premium for you. Your life insurance is based on your annual salary. This amount is limited to \$50,000.00. Your life insurance includes accidental death on yourself only. The amount of your accidental death insurance is equal to the amount of your life insurance.

There is no accidental death on dependents. Spouse insurance is \$2,000.00 and children are \$1,000.00.

VOLUNTARY LIFE INSURANCE (Aetna): If you elect coverage, your effective date will be the first day of the month following 3 months of employment. You may elect up to \$100,000 of coverage without answering health questions or having a physical. You may also cover your spouse for \$35,000 and your children for \$5,000 or \$10,000 of coverage. You may choose to go over those amounts on yourself or your spouse but would be subject to answering health questions and possibly a physical. The cost of this coverage is based on your age.

HEALTH INSURANCE (Blue Cross Blue Shield of MS): If you elect coverage, your effective date will be the first day of the month following 3 months of employment. Your premium will begin to be deducted the first pay check of that month. Family coverage is \$323.20 per month and single coverage is \$145.88 per month. You will receive a summary plan description, welcome packet, and health insurance card (which includes prescription card) when your coverage takes effect. This is deducted from pre-tax dollars under the cafeteria plan.

DENTAL INSURANCE (Genworth Financial): If you elect coverage, your effective date will be the first day of the month following 3 months of employment. Family coverage is 52.04 per month, employee and spouse is 35.92 per month, employee and child(ren) is 32.00 per month and employee only is 14.60 per month. You will receive a dental card and plan description after you become eligible. This is deducted from pre-tax dollars under the cafeteria plan.

SHORT TERM DISABILITY (UNUM Provident): If you elect coverage, your effective date will be the first day of the month following 3 months of employment. Our STD policy is also through UNUM Insurance. The premium for this benefit is based on your annual salary. In the case of an illness, surgery, etc, this benefit will start paying 60% of your salary on the 8th day of doctor approved leave and will pay for up to 90 days.

LONG TERM DISABILITY (UNUM Provident): If you elect coverage, your effective date will be the first day of the month following 3 months of employment. Our LTD policy is through UNUM Insurance. The premium for this benefit is based on your annual salary. In the case of disability, this benefit will start paying after you have been out of work for 90 days and will pay 60% of your salary.

FLEXIBLE SPENDING ACCOUNT (Ceridian): If you elect this benefit it will go into effect the first day of the month following 3 months of employment. We have a medical reimbursement plan with maximum election of \$2000 annually. This is deducted from pre-tax dollars under the cafeteria plan. This is basically a savings account for you to use on un-reimbursed medical or dental expenses, such as co-pays, deductibles and non-covered expenses.

401K PLAN (Principal Financial Group): Enrollment dates for 401K are January 1 and July 1. You become eligible after you have been employed for one year prior to these dates. Merchants Foodservice will match 50% of your contribution up to 6% of your salary. You must be employed for 5 years to be 100% vested.

SCHOLARSHIPS: Tatum Development Corporation and its subsidiaries offer forty (40) \$1,000 scholarships to be awarded to students meeting certain eligibility requirements. Your children or relatives may be eligible to receive a scholarship to the school of their choice. If you have an interest, please ask for an application.



STEVE ADAMS

DIRECTOR OF OPERATIONS - INCENTIVE PROGRAM

OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2005

- For attaining period budget, you will earn as follows: 1% annual salary for attaining goal on throughput per warehouse hour.

	1 st Period	2 nd Period	3 rd Period
1%	38	38	38
1%	40	40	40

- 1% annual salary for averaging 2-5 errors per 1000 or less shipping accuracy.
Additional 1% for averaging 2 errors per 1000 or less shipping accuracy.
- 2% for having less warehouse overtime dollars than prior year.
- 1% annual salary for not exceeding budget for inventory shrinkage/damage (0.5% of sales)
- 2% annual salary for attainment of company wide net profit budget.
- 1% annual salary for attaining AIB Inspection Score 900.
- Paid 3 times a year on previous 4-month performance.

PAYMENT: Payment will be made based on the amount earned as outlined above multiplied by the % of branch sales achieved compared to budget.

NOTE: You must be employed throughout the entire period to receive payment of any incentive compensation.

**DEFENDANT'S
EXHIBIT**

10

Steve Adams Clanton Operations Manager	Period 3 - 2004		Bonus Percentage		Bonus
	Budget	Actual			
Throughput per hour	35.0	34.4	2.00%		
Second Level	38.0	34.4	1.00%		
Shipping Accuracy Per 1,000	3.00	2.10	1.00%	Y	\$625.00
Second Level	2.00	2.10	1.00%		
DSR Sales @97%	\$11,836,991	\$11,698,471	1.00%		
Inventory Losses	0.50%	0.63%	1.00%		
AIB Score	860	910	1.00%	Y	\$625.00
Second Level	900	910	1.00%	Y	\$625.00
Company Wide Profit			2.00%	Y	<u>\$1,250.00</u>
Total Bonus					<u><u>\$3,125.00</u></u>
Branch Sales	\$20,766,859	\$19,531,496	94.1%		<u><u>\$2,939.11</u></u>
Pro-rated for one month @ 25%					<u><u>\$734.78</u></u>

Steve Adams Clanton Operations Manager	Period 1 - 2005		Bonus Percent		Bonus Dollars
	<u>Budget</u>	<u>Actual</u>			
Whse Throughput per hour	38.00	36.47	1.00%		
Second Level	40.00	36.47	1.00%		
Shipping Accuracy Per 1,000	2.50	2.10	1.00%	Y	\$625.00
Second Level	2.00	2.10	1.00%		
Reduced Whse O/Time \$	\$54,434	\$33,369	2.00%	Y	\$1,250.00
Inventory Shrink / Damage	0.50%	0.68%	1.00%		
AIB Score	900	900	1.00%	Y	\$625.00
Company Wide Profit			2.00%		
Total Bonus					<u>\$2,500.00</u>
Branch Sales	\$21,603,708	\$22,522,670	104.25%		<u>\$2,606.35</u>

Steve Adams Clanton Operations Manager		Period 2 - 2005		
	<u>Budget</u>	<u>Actual</u>	<u>Bonus Percentage</u>	<u>Bonus</u>
Throughput per hour	38.0	37.1	1.00%	
Second Level	40.0	37.1	1.00%	
Shipping Accuracy Per 1,000	2.50	2.72	1.00%	
Second Level	2.00	2.72	1.00%	
Less Whse OT Dollars vs PY	\$22,415	\$56,476	2.00%	
Inventory Losses	0.50%	0.51%	1.00%	
AIB Score	900	0	1.00%	
Company Wide Profit			2.00%	
Total Bonus				<u>\$0.00</u>
Branch Sales	\$24,082,571	\$26,469,557	109.9%	<u>\$0.00</u>

DATE 3/29/2007 2:29 PM

COMPANY : 01

MERCHANT'S FOODSERVICE
EMPLOYEE CHECK HISTORY
FROM 1/01/2004 TO 12/31/2005

PRUR57RPT

PAGE 1
OS, Inc!

CHECK NUMBER	CHECK DATE	PAY PERIOD DATE	GROSS EARNINGS	FEDERAL TAXES	FICA/MEDC TAXES	STATE/ SUT W/H	OTHER TAXES	MISC DEDS	NET AMOUNT	HOURS PAID	PAY RATE
DIV/DEPT: 12619 RECEIVING & SHIPPING											
108194	9/15/04	9/15/04	3,038.19	409.96	232.42	122.45	.00	.00	2,273.36	87.00	2,604.170
	9/30/04	9/30/04	2,604.17	310.83	199.22	105.71	.00	.00	1,988.41	87.00	2,604.170
	10/15/04	10/15/04	2,604.17	310.83	199.21	105.71	.00	.00	1,988.42	87.00	2,604.170
108270	10/27/04	10/27/04	734.78	40.14	56.21	25.77	.00	.00	612.66	.00	2,604.170
	10/29/04	10/31/04	2,604.17	310.83	199.23	105.71	.00	518.51-	2,506.91	87.00	2,604.170
	11/15/04	11/15/04	2,604.17	310.83	199.22	105.71	.00	.00	1,988.41	87.00	2,604.170
	11/30/04	11/30/04	2,604.17	310.83	199.22	105.71	.00	.00	1,988.41	87.00	2,604.170
	12/15/04	12/15/04	2,604.17	310.83	199.22	105.71	.00	23.12	1,965.23	87.00	2,604.170
	12/30/04	12/31/04	2,604.17	310.83	199.21	105.71	.00	117.11-	2,105.53	87.00	2,604.170
	1/14/05	1/15/05	2,604.17	310.20	199.22	105.74	.00	28.12	1,960.89	87.00	2,604.170
	1/31/05	1/31/05	2,604.17	310.20	199.22	105.74	.00	2.20	1,986.81	87.00	2,604.170
	2/15/05	2/15/05	2,604.17	310.20	199.22	105.74	.00	9.49	1,979.52	87.00	2,604.170
108558	2/25/05	2/25/05	2,606.35	310.53	199.39	105.83	.00	.00	1,990.60	.00	2,604.170
	2/28/05	2/28/05	2,604.17	310.20	199.21	105.74	.00	28.12	1,960.90	87.00	2,604.170
	3/15/05	3/15/05	2,604.17	283.08	185.38	98.05	.00	26.16-	2,063.82	87.00	2,604.170
	3/31/05	3/31/05	2,604.17	283.08	185.39	98.05	.00	208.96	1,828.69	87.00	2,604.170
	4/15/05	4/15/05	2,604.17	283.08	185.38	98.05	.00	208.96	1,828.69	87.00	2,604.170
	4/29/05	4/30/05	2,604.17	283.08	185.38	98.05	.00	208.96	1,828.69	87.00	2,604.170
	5/13/05	5/15/05	2,604.17	283.08	185.38	98.05	.00	73.50-	2,111.16	87.00	2,604.170
	5/31/05	5/31/05	2,604.17	283.08	185.38	98.05	.00	150.64	1,887.02	87.00	2,604.170
	6/15/05	6/15/05	2,604.17	283.08	185.39	98.05	.00	208.96	1,828.69	87.00	2,604.170
	6/30/05	6/30/05	2,604.17	283.08	185.39	98.05	.00	208.96	1,828.69	87.00	2,604.170
	7/15/05	7/15/05	2,604.17	283.08	185.39	98.05	.00	208.96	1,828.69	87.00	2,604.170
EMPLOYEE TOTALS:			58,462.72	6,724.96	4,347.89	2,299.43	.00	760.17	44,330.27	1,827.00	

END OF COMPANY 1

DEFENDANT'S
EXHIBIT

11

04/03/2007 15:12 2562342044

DERRICK BLYTHE

PAGE 14

THE MERCHANTS COMPANY
P O BOX 1351
HATTIESBURG, MS 39401

**DEFENDANT'S
EXHIBIT**

12

NON-NEGOTIABLE NON-NEGOTIABLE NON-NEGOTIABLE NON-NEGOTIABLE
Direct Deposit Information

CHARLES S ADAMS

Account

Amount
\$1,828.69

ALEXANDER CITY, AL

NON-NEGOTIABLE

Period Date: 6/30/2005
Check Date: 6/30/2005

01 19 12619 1

Emp #: 15908

MERCHANTS FOODSERVICE
1100 EDWARDS STREET
P O BOX 1351
HATTIESBURG, MS 39403-1351

CHARLES S ADAMS

ALEXANDER CITY, AL

Exemptions/Allowances

Federal: M/00 State: AL: S/00

Earnings Hours Current
SALARY 87.00 2604.17

Current YTD
Benefits
HLTH-FAMILY 154.82 1238.56
LIFE INS 5.97 71.64

Ben Ttl 160.79 1310.20

GROSS HOURS/PAY 87.00 2604.17

Taxable Earnings Current YTD
Gross 2604.17 33856.39
Fed 2423.33 32409.67
FICA 2423.33 32409.67
State 2423.33 32409.67

Vac/Sick/Other
VACATION 16.00

Deductions Current YTD
Federal 283.08 3015.97
FICA 185.39 2479.34
State 98.05 1313.19
HLTH 154.82 1238.56
Dental 26.02 208.16
STD 10.10 121.20
LTD 13.02 156.24
United Way 5.00 60.00
MEALS 51.42
HOTEL/TRAVEL 569.03

Deductions Cont Current YTD

Ded Ttl \$775.48 \$8,772.21
Chk Amt \$.00

Net Pay: \$1,828.69 Dir Dep \$1,828.69

04/03/2007 16:12 2562342044

DERRICK BLYTHE

PAGE 15

THE MERCHANTS COMPANY
P O BOX 1351
HATTIESBURG, MS 39401

NON-NEGOTIABLE NON-NEGOTIABLE NON-NEGOTIABLE NON-NEGOTIABLE
Direct Deposit Information

CHARLES S ADAMS

Account

Amount

\$1,986.81

ALEXANDER CITY, AL

NON-NEGOTIABLE
GO# Div/Loc Sept Shift
01 19 12619 1

Period Date: 1/31/2005

Check Date: 1/31/2005

Emp #: 15908

MERCHANTS FOODSERVICE
1100 EDWARDS STREET
P O BOX 1351
HATTIESBURG, MS 39403-1351

CHARLES S ADAMS

ALEXANDER CITY, AL

Exemptions/Allowances

Federal: M/00 State: AL: S/00

Earnings	Hours	Current
SALARY	87.00	2604.17

	Current	YTD
Benefits		
LIFE INS	5.97	11.94

Ben Ttl	5.97	11.94
---------	------	-------

GROSS HOURS/PAY	87.00	2604.17
<u>Taxable Earnings</u>	<u>Current</u>	<u>YTD</u>
Gross	2604.17	5208.34
Fed	2604.17	5208.34
FICA	2604.17	5208.34
State	2604.17	5208.34
<u>Deductions</u>	<u>Current</u>	<u>YTD</u>
Federal	310.20	620.40
FICA	199.22	398.44
State	105.74	211.48
STD	10.10	20.20
LTD	13.02	26.04
United Way	5.00	10.00
HOTEL/TRAVEL	25.92-	25.92-

<u>Vac/Sick/Pers/Other</u>	
VACATION	16.00

<u>Deductions Cont</u>	<u>Current</u>	<u>YTD</u>
------------------------	----------------	------------

Net Pay: \$1,986.81 Dir Dep \$1,986.81

Ded Ttl	\$617.36	\$1,260.64
Chk Amt	\$.00	



**MERCHANTS
FOODSERVICE**

Serving Your Favorite Restaurants!

Post Office Box 1351
Hattiesburg, MS 39403-1351
(800) 844-FOOD Fax: (601) 582-5333

**DEFENDANT'S
EXHIBIT**

13

MERCHANTS FOOD SERVICE ACKNOWLEDGMENT OF EMPLOYMENT STATUS

I understand that as a condition of my being employed with Merchants Foodservice, I am being employed on an at-will basis for an indefinite period of time without any type of contract of employment (excepting the sales representatives agreement for sales persons), either actual or implied. I further understand that as an at-will employee, my employment can be terminated at any time by either me or by Merchants Foodservice with or without cause and/or with or without notice. In addition, I understand that Merchants Foodservice retains the right to alter, revise, change, and/or eliminate any of its policies, practices, or rules and/or any of its pay or benefits at its discretion at any time without necessarily giving me or any other employee advance or actual notice.

I also understand that I may be required to take and pass a physical examination including screening for alcohol and drugs in a manner no inconsistent with any applicable law, as a part of the employment process and at any time during my employment with Merchants Foodservice and its representatives and/or agents.

I also understand that any property or possession, including my automobile, which I bring onto the property of Merchants Foodservice, or into any vehicle owned or operated by Merchants Foodservice, is subject to search by Merchants Foodservice with or without notice and/or with or without reasonable or probable cause.

I have read, or had read to me, the above Acknowledgment of Employment Status in its entirety; I fully understand all of its provisions and/or I have had the opportunity to ask any questions which I might have about any of its provisions; and I agree to abide by all of its provisions as a condition of being employed by and continuing to be employed by Merchants Foodservice.

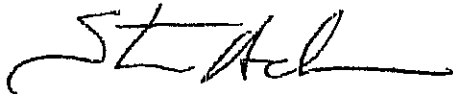
8-24-04
Date

Chuck S. Ash
Signature

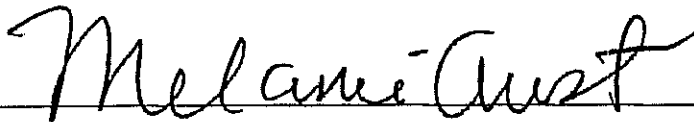
Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between The Merchants Company and any of its employees. The provisions of the handbook have been developed at the discretion of management and may be amended or canceled at any time, at The Merchants Company's sole discretion.

I ACKNOWLEDGE THAT I HAVE RECEIVED THE MERCHANTS COMPANY HANDBOOK AND FURTHER ACKNOWLEDGE THE IF I WISH ADDITIONAL INFORMATION OR DETAILS OF PERSONNEL POLICIES I HAVE THE FOLLOWING OPTIONS:

1. CONTACT PERSONNEL MANAGER LOCATED IN THE HATTIESBURG OFFICE.
2. REFER TO PRINTED MANUAL POSTED ON BULLETIN BOARD IN THE CENTRAL OFFICE AND / OR THE BRANCH OFFICE BULLETIN BOARDS.



EMPLOYEE SIGNATURE



WITNESSED BY

**DEFENDANT'S
EXHIBIT**

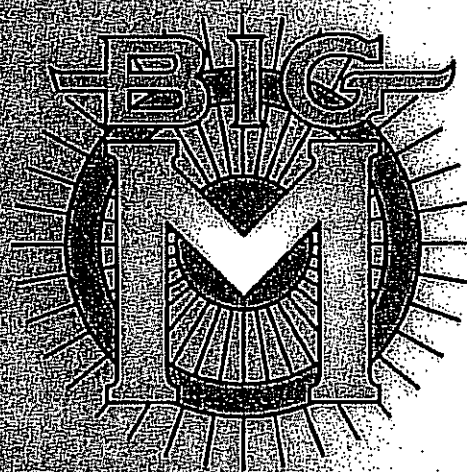
14

8/01/02

THE MERCHANTS COMPANY

FOOD SERVICE DISTRIBUTOR

Delivering an extra measure of service since 1904



EMPLOYEE HANDBOOK

August 1, 2002

DEFENDANT'S
EXHIBIT

INTRODUCTION

This handbook is designed to acquaint you with The Merchants Company and provide you with information about working conditions, employee benefits, and some of the policies affecting your employment. You should read, understand, and comply with all provisions of the handbook. It describes many of your responsibilities as an employee and outlines the programs developed by The Merchants Company to benefit employees. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

No employee handbook can anticipate every circumstance or question about policy. As The Merchants Company continues to grow, the need may arise to change policies described in the handbook. The Merchants Company, therefore, reserves the right to revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. Employees will, of course, be notified of such changes as they occur.

Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between The Merchants Company and any of its employees. The provisions of the handbook have been developed at the discretion of management and may be amended or canceled at any time, at The Merchants Company's sole discretion.

These provisions supersede all existing policies and practices and may not be amended or added to without the express written approval of the President of The Merchants Company.

GENERAL EMPLOYMENT POLICY

The Merchants Company believes that the work conditions, wages, and benefits it offers to its employees are competitive with those offered by other employers in this area and in this industry. If employees have concerns about work conditions or compensation, they are strongly encouraged to voice these concerns openly and directly to their supervisors.

Our experience has shown that when employees deal openly and directly with supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. We believe that The Merchants Company amply demonstrates its commitment to employees by responding effectively to employee concerns.

EQUAL EMPLOYMENT OPPORTUNITY

In order to provide equal employment and advancement opportunities to all individuals, employment decisions at The Merchants Company will be based on merit, qualifications, and abilities. Except where required by law, employment practices will not be influenced or affected by an applicant's or employee's race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.

EMPLOYMENT AND PERSONNEL RECORDS

An employment and personnel record is maintained for each employee. All new employees must complete the necessary personnel forms in the personnel office before starting work.

To insure you are receiving the benefits to which you are entitled under all conditions of employment, it is important your records be kept up-to-date at all times. If there is a change in your marital status, number of dependents, address, telephone number, insurance beneficiary or legal name, please notify the personnel office in writing.

EMPLOYMENT CLASSIFICATION

Regular Full Time Employees:

Employees who are regularly scheduled to work The Merchants Company's full time schedule generally, are eligible for The Merchants Company's benefit package, subject to the terms, conditions, and limitations of each benefit program.

Regular Part Time Employees:

Employees who are not assigned to a part time status and who are regularly scheduled to work less than the full time work schedule but at least 20 hours per week are eligible for some of The Merchants Company's benefits.

Part Time Employees:

Employees who work less than 20 hours per week and are hired as interim replacements to temporarily supplement the work force, or to assist in the completion of a specific project retain that status of part-time unless and until notified of a change. While part-time employees receive all legally-mandated benefits (such as workers' compensation insurance and Social Security), they are ineligible for The Merchants Company's other benefit programs.

PROBATIONARY PERIOD

All new and rehired employees work on a probationary basis for the first 90 calendar days after their date of hire. The Merchants Company uses this period to evaluate employee capabilities, work habits, and overall performance. Either the employee or The Merchants Company may end the employment relationship at will at any time during or after the probationary period, with or without cause or advance notice.

PERFORMANCE EVALUATION

Supervisors and employees are strongly encouraged to discuss job performance and goals on an informal, day-to-day basis. Additional formal performance reviews are conducted to provide both supervisors and employees the opportunity to discuss job task, identify and correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals.

The performance of all employees is generally evaluated according to an ongoing 12-month cycle.

EMPLOYMENT TERMINATION

Termination of employment is an inevitable part of personnel activity within any organization. Since employment with The Merchants Company is based on mutual consent, both the employee and The Merchants Company have the right to terminate employment at will, with or without cause, at any time. Employee benefits will be affected by employment termination in the following manner. All accrued, vested benefits that are due and payable at termination will be paid. If the terminated employee is eligible under the COBRA law, then it will be at the expense of the employee. The employee will be notified in writing of the benefits that may be continued and of the terms, conditions, and limitations of such continuance.

RESIGNATION

Resignation is a voluntary act initiated by the employee to terminate employment with The Merchants Company. Although advance notice is not required, The Merchants Company requests at least two weeks' written resignation notice from all employees.

If an employee does not provide advance notice as requested, the employee will be considered ineligible for rehire and may not be paid any accrued vacation time.

EMPLOYMENT BENEFITS AND ALLOWANCES

Eligible employees at The Merchants Company are provided a wide range of benefits. A number of the programs (such as Social Security, workers' compensation, and unemployment insurance) cover all employees in the manner prescribed by the law.

Benefits eligibility is dependent upon a variety of factors, including employee's classification, and your supervisor can identify the programs for which you are eligible. Details of many of these programs can be found in the original policy manual located in the Personnel Office. Some benefit programs require contributions from the employee (such as Medical Insurance, 401K plan, long term disability) but most are full paid by The Merchants Company, including Life Insurance.

VACATION BENEFITS

Vacation time off with pay is available to eligible employees to provide opportunities for rest, relaxation and personal pursuits. Employees in the following employment classification(s) are eligible to earn and use vacation time as described in this policy:

- Regular full-time employees
- Regular part-time employees

The amount of paid vacation time employees receive each year increases with the length of their continuous employment as shown below:

Upon initial eligibility.....	5 days
After 3 years	10 days
After 15 years	15 days

The length of eligible service is based on the number of years you are employed with The Merchants Company. With The Merchants Company, you will be eligible to take vacation time on or after January 1st following date of employment. Anyone hired before April 1st will have a full 5 days vacation which they may take any time in the following calendar year. Anyone hired during April or May will have 4 days which they may take any time in the following

BEREAVEMENT LEAVE

An eligible employee, (Regular full-time and Regular part-time) may be granted up to two days, at the time of the death, of paid bereavement leave in case of death in the immediate family. The Merchants Company defines "immediate family" as the employee's spouse, parent, child, sibling; the employee's spouse's parent, child or sibling; the employee's child's spouse; grandparents or grandchildren.

LEAVES SUBJECT TO FAMILY AND MEDICAL LEAVE ACT OF 1993

The Family and Medical Leave Act of 1993 allows The Merchants Company to grant unpaid family or medical leave for specific circumstances. For an employee to be eligible to take leave, the employee must have worked for The Merchants Company for at least 12 months and for at least 1,250 hours during the year preceding the start of the leave and the employee must request the leave for one of the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. In order to care for the spouse, or a son, daughter or a parent of the employee, if such spouse, son, daughter or parent has a serious health condition; or
4. Because of a serious health condition that makes the employee unable to perform the functions of his or her position.

Depending on the circumstances, employees requesting leaves for one of these reasons may be eligible for up to 12 weeks of unpaid leave during any twelve-month period. Employees must give 30 days' notice to their immediate supervisor of need for unpaid leave when leave is foreseeable for birth, placement, foster care, or planned medical treatment. If 30 days' notice is not practicable, notice must be given "as soon as practicable," meaning one or two

ing calendar year. Anyone hired during June or July will have 3 days which they may take any time in the following calendar year. Any one hired in August or September will have 2 days which they may take any time in the following calendar year. Anyone hired in October or November will have 1 day which they may take any time in the following calendar year. Anyone hired in December will not have any vacation until January 1st of the second year. Vacation time will not be earned during leave of absence except military leave of absence. (See individual leave of absence policies for more information.)

Paid vacation time can be used in minimum increments of one day. To take vacation, employees should request advance approval from their supervisors at least two weeks prior to taking vacation time. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

Upon termination of employment, employees will be paid for unused vacation time that has been earned through the last day of work. (However, if The Merchants Company, in its sole discretion, terminated employment for cause, or if an employee does not give a two week notice, forfeiture of unused vacation time may result.)

LEGAL HOLIDAYS

The Merchants Company will grant holiday time off to all eligible employees, regular full-time and regular part-time, on the holidays listed below:

New Years Day (January 1)
 Memorial Day
 Independence Day (July 4)
 Labor Day (first Monday in September)
 Thanksgiving (fourth Thursday in November)
 Christmas (December 25)

To be eligible for holiday pay, nonexempt employees must work the last scheduled day immediately preceding and the first scheduled day immediately following the holiday. If the day before or after holiday is a scheduled day off Branch Manager can approve pay for holiday.

working days. Requests covered by the Family and Medical Leave Act will be administered in accordance with the terms of such act.

BENEFIT PROGRAM PARTICIPATION

Employees on approved leave of absence under any of the foregoing provisions may continue to be covered by The Merchants Company's health and life insurance plans, provided that any insurance premiums or contributions due from the employee are kept current during the approved leave.

LEAVE OF ABSENCE

The Merchants Company provides medical leaves of absence without pay to eligible employees who are temporarily unable to work due to a medical disability, up to a maximum of 90 calendar days every two years.

A military leave of absence will be granted to employees to attend scheduled drills or training, or if called to active duty with the U. S. Armed Services. The leave will be unpaid. However, employees may use any accrued vacation time off for the absence.

WAGES AND SALARIES

Salespersons and nonexempt employees are paid weekly every Friday for the week ending on the previous Saturday at midnight. EXEMPT employees are paid semi-monthly on the 15th and LAST day of the month. Each paycheck will include earnings for all work performed through the end of the previous payroll period.

In the event that a regularly scheduled payday falls on a day off (e.g., a weekend or holiday), employees will receive pay on the last day of work before the regularly scheduled payday.

PAY DEDUCTIONS AND SETOFFS

The law requires that The Merchants Company make certain deductions from every employee's compensation. Among these are applicable federal, state, and local income taxes. The Merchants Company also must deduct Social Security taxes on each employee's earnings up to a specified limit that is called the Social Security "wage base." The Merchants Company matches the amount of Social Security taxes paid by each employee.

The Merchants Company offers programs and benefits beyond those required by law. Eligible employees may voluntarily authorize deductions from their paychecks to cover the cost of participation in these programs.

Pay setoffs are pay deductions taken by The Merchants Company, usually to help pay off a debt or obligation to The Merchants Company or others.

If you have questions concerning why deductions were made from your paycheck, or how they were calculated, your supervisor can assist in having your questions answered.

REST AND MEAL PERIODS

Each workday, nonexempt employees are provided with two rest periods of 15 minutes in length. Since this time is counted and paid as time worked, employees must not be absent from their workstations beyond the allotted rest period time.

All full-time OFFICE employees are provided with one meal period of 60 minutes in length each workday. Eating will not be permitted at desk. Snacks or drinks occasionally will be permitted, but full course meals, such as breakfast or lunch are to be eaten in the designated areas provided. The only item permitted at the receptionist desk in the lobby will be a drink such as coffee or a soft drink.

All full-time night WAREHOUSE employees will have one meal period of 30 minutes in length each workday. All full-time day WAREHOUSE employees will have one meal period of 60 minutes in length each workday. Supervisors will schedule meal periods to

USE OF E-MAIL AND INTERNET

1. Use of both systems should be for business only. Private use of the Internet or the e-mail system should be done on personal time, not company time. Corresponding with relatives that live at a distance is not prohibited but should be done on personal time.
2. E-mail containing joke material are considered inappropriate and should not be passed around or sent to other parties in or out of the office.
3. Use of company equipment to view, access or distribute pornographic material is strictly forbidden.
4. Employees with access to e-mail must complete an acceptable use policy agreement.

USE OF PHONE AND MAIL SYSTEMS

Employees will be required to reimburse The Merchants Company for any charges resulting from their personal use of the telephone.

The use of The Merchants Company paid postage for personal correspondence is permitted, if you reimburse THE MERCHANTS COMPANY for postage costs.

SMOKING

In keeping with The Merchants Company's intent to provide a safe and healthful work environment, smoking is prohibited except in pre-designated areas. Smoking is only allowed on personal time or break time.

This policy applies equally to all employees, customers, and visitors.

accommodate operating requirements. All full-time DRIVER employees will have one meal period of 30 minutes in length each workday. It will be up to the Driver as to what time of day he takes it.

Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

SAFETY

SAFETY IS EVERYBODY'S BUSINESS! Make everyday a safe day.

To provide a safe and healthful work environment for employees, customers, and visitors, The Merchants Company has established a workplace safety program. This program is a top priority for The Merchants Company. The Safety Director has responsibility for implementing, administering, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.

The Merchants Company provides information to employees about workplace safety and health issues through regular internal communication channels such as supervisor-employee meetings, bulletin board postings, memos, or other written communications.

Each employee is expected to obey safety rules and to exercise caution in all work activities. Employees must immediately report any unsafe condition to the appropriate supervisor. Employees who violate safety standards, who cause hazardous or dangerous situations, or who fail to report or, where appropriate, remedy such situations, may be subject to disciplinary action, up to and including termination of employment. Two (2) worker's compensation incidents that are the employee's fault results in a 3-day suspension without pay. Three (3) worker's compensation incidents that are the employee's fault result in termination.

In the case of accidents that result in injury, regardless of how insignificant the injury may appear, employees should immediately notify the Safety Director or the appropriate supervisor. Such reports are necessary to comply with laws and initiate insurance and workers' compensation benefits procedures.

PROGRESSIVE DISCIPLINE POLICY

The purpose of this policy is to state The Merchants Company's position on administering equitable and consistent discipline for unsatisfactory conduct in the work place. The best disciplinary measure is the one that does not have to be enforced and comes from good leadership and fair supervision at all employment levels.

The Merchants Company's own best interest lies in ensuring fair treatment of all employees and in making certain that disciplinary actions are prompt, uniform and impartial. The major purpose of any disciplinary action is to correct the problem, prevent recurrence, and prepare the employee for satisfactory service in the future.

Disciplinary action may call for any of four steps - verbal warnings, written warnings, suspension with or without pay, or termination of employment - depending on the severity of the problem and the number of occurrences. There may be circumstances when one or more steps are bypassed.

Progressive discipline means that, with respect to most disciplinary problems, these steps will normally be followed: a first offense may call for a verbal or written warning; a second offense may be followed by a written warning or suspension; and still another offense may then lead to termination of employment. The Merchants Company recognizes that there are certain types of employee problems that are serious enough to justify either a suspension, or in extreme situations, termination of employment, without going through the usual progressive discipline steps.

By using progressive discipline, we hope that most employee problems can be corrected at an early stage, benefiting both employee and The Merchants Company.

ATTENDANCE AND PUNCTUALITY

It is expected that all employees report to work every workday, and it is also expected that they report to work at the scheduled reporting time.

The Merchants Company also realizes that at times employees will not be able to work because of illness or injury or will be late for some unforeseen reason.

When employees are going to be late or absent, it is their responsibility to call in personally and report the reason to their immediate supervisor. If an employee needs to leave early, they must notify their supervisor.

Excess or continued tardiness, early departures and absenteeism can result in disciplinary action up to and including discharge, based upon the following guidelines.

Employee's absences during probationary period:

1st absence - verbal warning

2nd absence - written notice

3rd absence - termination

Full time or part time employee's tardies, early departures and absences in a rolling calendar year. Example: Occurrence in June 2001 would drop off in June 2002. Absences will be treated separately for early departures and tardies.

1 occurrence - verbal warning

2-3 occurrences - written warning

4 occurrences - 3-day suspension

5 occurrences - termination

If an employee fails to call his/her supervisor for two consecutive days, the employee will be considered to have voluntarily quit.

EMPLOYEE CONDUCT AND WORK RULES

To assure orderly operations and provide the best possible work environment, The Merchants Company's expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment.

- Theft or inappropriate removal or possession of property
- Falsification of time keeping records
- Fighting or threatening violence
- Boisterous or disruptive activity
- Negligence or improper conduct leading to damage of employer owned or customer-owned property
- Insubordination or other disrespectful conduct
- Violation of safety or health rules
- Smoking in prohibited areas
- Sexual or other unlawful harassment
- Possession of dangerous or unauthorized materials, such as explosives or firearms
- Excessive absenteeism or any absences without notice
- Unauthorized use of telephones, mail system, or other employer owned equipment
- Unauthorized disclosure of business "secrets" or confidential information
- Violation of personnel policies
- Distribution of pornographic materials
- Unsatisfactory performance or conduct

SEXUAL HARASSMENT POLICY

The Merchants Company believes sexual harassment is a form of employee misconduct, which undermines the integrity of the employment relationship. It is the policy of The Merchants Company that sexual harassment will not be tolerated. Violators of this policy are subject to severe disciplines, up to and including discharge of the offending employee or employees.

Sexual harassment occurs when sexual advances, request for sexual favors, or any conduct of a sexual nature is made a condition of employment, results in advantages if agreed to or losses if rejected, interferes with job performance, or results in a hostile, intimidating or offensive work environment. The Merchants Company's expressly prohibits sexual harassment of any nature.

Any complaints or inquiries regarding sexual harassment should be brought to the immediate attention of the Human Resources Department or the appropriate Supervisor and the company will fully investigate such claims promptly, without regard to the identities or positions held by either the complaining employee or the employee charged with the sexual harassment. If for any reason an employee wishes to complain or inquire regarding sexual harassment but feels it would not be appropriate to raise such issues with the Human Resources Department or Supervisor, such employee may inquire or complain to any management level employee of the company, and such inquires or complaints will receive the same prompt investigation.

Employees will not be disciplined or discriminated against in any way for sexual harassment inquiries or complaints made in good faith.

DRUG AND ALCOHOL POLICY

Employees are The Merchants Company's greatest assets. The Merchants Company loses when a valued employee is hurt or must be terminated for drug abuse. To protect the reputation of the Company as a good corporate citizen, drug trafficking or use by employees cannot be tolerated.

The illegal use, possessions of, or trafficking in illegal drugs or controlled substances (drugs) on the job or on the Company's property (owned or leased) is a violation of federal law, as well as against the policies of the company. It is an offense which can lead to dismissal. The consumption of alcoholic beverages by employees during the workday shall constitute grounds for disciplinary action, which may include suspension and/or dismissal.

PERSONAL APPEARANCE

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image The Merchants Company presents to customers and visitors.

During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, employees will not be compensated for the time away from work.

The following will apply to all employees:

1. All wearing apparel must be neat and clean, whether it is required uniform or otherwise.
2. All shirttails must be worn inside trousers.
3. If an employee has a beard, it must be kept neatly trimmed and clean. If an employee has long hair, it must be kept clean.
4. Every employee should realize the importance of personal hygiene, since we are handling and selling food product. Body odors, dirty hands, faces, even fingernails, can be an indicator of

the quality of our products. Personal pride alone should prevent any of these from reflecting on our product. Extreme care should be taken to prevent such.

UNIFORMS

The following will apply to Drivers, Warehouse and Shipping Personnel:

1. Delivery Drivers must wear The Merchants Company uniform shirts during work hours.
2. Shoes should be a dress or work shoe. Certain canvas shoes are acceptable if made on the order of a work shoe. Tennis shoes, sneakers, track shoes, etc., are not permissible.
3. Shoes, like uniforms should be clean.
4. Employees who prefer to wear caps, should wear Merchants Company Caps.

OFFICE DRESS CODE

The following will not be permitted as office attire:

1. Midriff tops or tops that do not meet your pants or shirt.
2. Shorts (Professional Business Skort Sets are okay)
3. T-shirts (with or without writings or slogans)
4. Tennis Shoes
5. Shirts with no collar (Men)
6. Blue Jeans

Friday has usually been a relaxed day in the office and will continue to be. Neatness is still required. Blue jeans may be worn on Fridays only as long as they are neat in appearance.

Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between The Merchants Company and any of its employees. The provisions of the handbook have been developed at the discretion of management and may be amended or canceled at any time, at The Merchants Company's sole discretion.

I ACKNOWLEDGE THAT I HAVE RECEIVED THE MERCHANTS COMPANY HANDBOOK AND FURTHER ACKNOWLEDGE THE IF I WISH ADDITIONAL INFORMATION OR DETAILS OF PERSONNEL POLICIES I HAVE THE FOLLOWING OPTIONS:

1. CONTACT PERSONNEL MANAGER LOCATED IN THE HATTIESBURG OFFICE.
2. REFER TO PRINTED MANUAL POSTED ON BULLETIN BOARD IN THE CENTRAL OFFICE AND / OR THE BRANCH OFFICE BULLETIN BOARDS.

EMPLOYEE SIGNATURE

WITNESSED BY

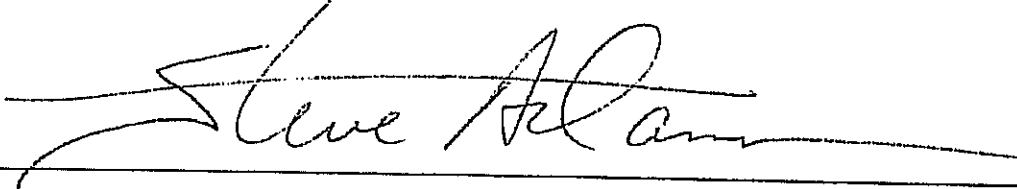
8/01/02

19

Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between Merchants and any of its employees. The provisions of the handbook have been developed at the discretion of management and may be amended or canceled at any time, at Merchants' sole discretion.

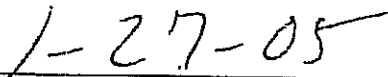
I ACKNOWLEDGE THAT I HAVE RECEIVED MERCHANTS FOODSERVICE HANDBOOK AND FURTHER ACKNOWLEDGE THE IF I WISH ADDITIONAL INFORMATION OR DETAILS OF PERSONNEL POLICIES I HAVE THE FOLLOWING OPTIONS:

1. CONTACT HUMAN RESOURCES LOCATED IN THE HATTIESBURG OFFICE AT 601-584-4046.
2. REFER TO PRINTED MANUAL POSTED ON BULLETIN BOARD IN THE CENTRAL OFFICE AND / OR THE BRANCH OFFICE BULLETIN BOARDS.



EMPLOYEE SIGNATURE

WITNESSED BY



DATE

**DEFENDANT'S
EXHIBIT**

10

1/01/05



**MERCHANTS
FOODSERVICE**

Serving Your Favorite Restaurants!

EMPLOYEE HANDBOOK

January 1, 2005

www.merchantsfoodservice.com

DEFENDANT'S
EXHIBIT

INTRODUCTION

This handbook is designed to acquaint you with Merchants Foodservice (hereinafter referred to as "Merchants" and/or the "Company") and provide you with information about working conditions, employee benefits, and some of the policies affecting your employment. This handbook will serve as a guideline for decision-making. Therefore, you should read, understand, and comply with all provisions of the handbook.

No employee handbook can anticipate every circumstance or question about policy. As Merchants continues to grow, the need may arise to change policies described in the handbook. Therefore, Merchants reserves the right to revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. Employees will be notified of such changes as they occur.

Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between Merchants and any of its employees. The provisions of the handbook have been developed at the discretion of management and may be amended or canceled at any time, at Merchants' sole discretion.

These provisions supersede all existing policies and practices and may not be amended or added to without the express written approval of the President of Merchants.

EMPLOYEE RELATIONS PHILOSOPHY

Merchants is committed to achieving outstanding operating results. We believe these results can best be achieved by:

- Providing employees with the opportunity to succeed
- Providing employees with the tools and resources necessary to complete their jobs
- Managing employees fairly and impartially
- Requiring employees to be accountable for their own success

The Company places a high value on the desire to work, on the ability to produce the desired results with efficiency and high quality, and on the willingness of employees to accept responsibility for their own success.

EMPLOYMENT AT-WILL

It is the Company's policy that all employees are employed at the will of the Company for an indefinite period. Merchants may terminate the employment relationship at any time, for any reason, with or without notice or cause. Employees may resign from the Company at any time, for any reason, and with or without notice. Employment with the Company does not constitute a contractual relationship and may be terminated according to applicable local, state and federal laws.

Completion of the ninety (90) day introductory period does not change the employee's status as an at-will employee or in any way restrict the Company's right to terminate such an employee or change its terms of employment.

EQUAL EMPLOYMENT OPPORTUNITY

Merchants is an Equal Employment Opportunity Employer. The Company affords equal employment opportunity in all of our employment practices, including the selection, hiring, promotion, transfer and compensation of all qualified applicants and employees without regard to race, color, religion, sex, national origin, age, marital status, citizenship status, disability, or any other protected status in accordance with the requirements of all federal, state, and local laws. Merchants expects every employee and manager to reflect the spirit of this commitment and philosophy with our fellow employees, our customers and our vendors.

EMPLOYMENT AND PERSONNEL RECORDS

An employment and personnel record is maintained for each employee. All new employees must complete the necessary personnel forms in the personnel office before starting work.

To insure your receiving the benefits to which you are entitled under all conditions of employment, it is important your records be kept up-to-date at all times. If there is a change in your marital status, number of dependents, address, telephone number, insurance beneficiary or legal name, please notify Human Resources in writing.

EMPLOYMENT STATUS CATEGORIES

Merchant's employees are categorized into a particular status to define their job and the type of work that they perform. These statuses determine several important performance criteria (e.g., benefit eligibility, etc.). Merchant's employees are classified in *one* of the following categories:

- **Exempt Employee** - a salaried employee who is not subject to the overtime provisions of the *Federal Fair Labor Standards Act of 1938*, as amended.
- **Non-Exempt Employee** - an hourly employee who is eligible to be paid for overtime pay hours worked in excess of 40 hours per week and whose overtime pay is calculated at one and a half times their regular hourly rate ("time-and-a-half").

Note: Overtime pay provisions may vary due to state laws.

- **Regular Full-time Employee** - An employee who is normally scheduled to work forty (40) or more hours a week. Regular Full Time Employees are eligible for all Company benefits.
- **Regular Part-Time Employee** - an employee who is normally scheduled to work twenty (20) hours or more per week but not more than forty (40) hours. Regular Part-Time employees may be eligible for some of the Company's benefits.
- **Part-Time Employee** - An employee who is normally scheduled to work less than twenty (20) hours per week. Part-Time Employees are not eligible for Company benefits.

These statuses do not guarantee employment for any specific length of time. Employment is at the mutual consent of the employee and the Company and can be terminated at will by the employee or the Company.

INTRODUCTORY PERIOD

For every new employee, the first ninety (90) days of employment are an introductory period for both the employee and the Company. During this time, you will have the opportunity to learn about the Company, your job, and your new surroundings. The Company will then evaluate your performance and make a decision concerning your continued employment.

While we are optimistic and hopeful that your time with us will be long and mutually beneficial, it may be that you or the Company will decide during the introductory period that the relationship is not satisfactory. If so, the employee or the Company may terminate the relationship for any reason without prior notice.

PERFORMANCE EVALUATION

Merchants believes that every employee should receive objective, accurate feedback regarding their job performance. Performance reviews are one the tools the Company uses to formalize and document employee performance. The employee's annual evaluation provides a vehicle for effective communication between the employee and management.

EMPLOYMENT TERMINATION AND RESIGNATION

It is the Company's policy that all employees are employed at the will of the Company for an indefinite period. Merchants or the employee may terminate the employment relationship at any time, for any reason, with or without notice or cause.

In cases of resignation, the employee must give two weeks notice if they expect to receive severance benefits. Vacation time may not be used to advance the termination date. On the last work day employees must return all Company property in their possession to the supervisor.

EMPLOYMENT BENEFITS AND ALLOWANCES

Eligible employees at Merchants are provided a wide range of benefits. Eligibility for these benefits is dependent upon a variety of factors, including but not limited to the employee's classification. A supervisor can identify the programs for which you are eligible. Please contact Human Resources to learn the details of these programs.

The Company reserves the right, in its sole discretion, at any time to change, modify, delete, add, or discontinue without prior notice any of the employee benefits currently being offered to its employees.

VACATION BENEFITS

Eligible employees (Regular full-time and Regular part-time) will earn and can use vacation time. Vacation time is calculated, as set forth below, based upon the employee's continuous employment with the Company:

Upon initial eligibility	5 days
After 3 years	10 days
After 15 years	15 days

The length of eligible service is based on the number of years you are employed with Merchants. With Merchants, you will be eligible to take vacation time on or after January 1st following date of employment. Anyone hired before April 1st will have a full 5 days vacation which they may take any time in the following calendar year. Anyone hired during June or July will have 3 days which they may take any time in the following calendar year. Any one hired in August or September will have 2 days which they may take any time in the following calendar year. Anyone hired in October or November will have 1 day which they may take any time in the following calendar year. Anyone hired in December will not have any vacation until January 1st of the second year. Vacation time will not be earned during leave of absence except military leave of absence. (See individual leave of absence policies for more information.)

Paid vacation time is encouraged to be used in weekly increments, however, may be used in minimum increments of one day. To take vacation, employees should request advance approval from their supervisors. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

Upon termination of employment, employees will be paid for unused vacation time that has been earned through the last day of work. (However, if Merchants, in its sole discretion, terminated employment for cause, or if an employee does not give a two-week notice, forfeiture of unused vacation time may result.)

LEGAL HOLIDAYS

Merchants will grant holiday time off to all eligible employees (regular full-time and regular part-time) on the holidays listed below:

Effective January 1, 2005:

- New Years Day (January 1)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Thanksgiving (fourth Thursday in November)
- Christmas (2 days, as scheduled by your shift supervisor)

To be eligible for holiday pay, nonexempt employees must work the last scheduled day immediately preceding and the first scheduled day immediately following the holiday. If the day before or after holiday is a scheduled day off your General Manager can approve pay for holiday.

BEREAVEMENT LEAVE

An eligible employee, (Regular full-time and Regular part-time) may be granted up to two days, at the time of the death, of paid bereavement leave in case of death in the immediate family. Merchants defines "immediate family" as the employee's spouse, parent, child, sibling; the employee's spouse's parent, child or sibling; the employee's child's spouse; grandparents or grandchildren.

FAMILY AND MEDICAL LEAVE POLICY

GENERAL STATEMENT

The Company's Family and Medical Leave policy is intended to provide employees a greater opportunity to balance their work and family responsibilities. Under the Family and Medical Leave Act ("FMLA"), all eligible employees are entitled to 12 weeks of leave during a defined 12 month period. In order to be eligible for FMLA leave, the employee must have worked for the Company for at least 12 months since the most recent hire date, and the employee must have worked at least 1,250 hours during the preceding 12-month period. In some situations, employees may use the FMLA leave intermittently (e.g., take a day or partial day periodically when needed during the year) to reduce the work week or work day, resulting in a reduced schedule. In all cases, the FMLA leave may not exceed a total of 12 weeks over a 12-month period. Intermittent or reduced leave under the FMLA require prior approval by Human Resources.

TYPES OF LEAVE COVERED

In order to qualify as FMLA leave under this policy, the employee must be taking leave for one of the following reasons:

1. The birth and care of a newborn child;
 2. The placement of a child for adoption or foster care;
 3. The care for a spouse, child, or parent with a serious health condition; or
 4. The employee's own serious health condition renders him or her incapable of performing the essential functions of the job.
- Employees with questions about what illnesses or situations are covered under this FMLA policy should contact Human Resources.

APPLICATION FOR LEAVE

Employees requesting leave must complete a "Request for Family and Medical Leave" form and return it to Human Resources. The completed application must include the reason for and expected duration of the requested leave.

NOTICE OF LEAVE

An employee intending to take Family and Medical Leave because of an expected birth or placement of a child, or because of a planned medical treatment, must submit an application for leave at least 30 days before the leave is to begin. If a 30-day notice is not possible, an employee must give notice to Human Resources as soon as practical.

MEDICAL CERTIFICATION OF LEAVE

An application for Family and Medical Leave must also be accompanied by a "Physician's Certification Statement" form completed by the applicable health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition.

Failure to comply with the medical certification requirements of this policy may result in the denial of FMLA leave request. Employees must provide certification no later than 15 days after being requested. The Company may request that additional certification be provided every 30 days during the leave period.

RETURN TO WORK

After the 12-week leave period allotted under the FMLA expires, the employee will be expected to return to work. Merchants Foodservice may require the employee to provide medical certification that the employee is able to perform the essential functions of his or her job at this time. If the employee does not return to work upon expiration of their FMLA leave, his/her re-employment rights under the FMLA terminate.

MILITARY LEAVE OF ABSENCE

A military leave of absence will be granted to employees to attend scheduled drills or training, or if called to active duty with the U.S. Armed Services. At the completion of the military leave period, the employee may return to the Company, subject to the requirements set forth in the Uniformed Services Employment and Reemployment Act ("USERRA"). If you have questions, please contact Human Resources.

WAGES AND SALARIES

Salespersons and nonexempt employees are paid weekly every Friday for the week ending on the previous Saturday at midnight. EXEMPT employees are paid semi-monthly on the 15th and last day of the month. Each paycheck will include earnings for all work performed through the end of the previous payroll period.

In the event that a regularly scheduled payday falls on a day off (e.g., a weekend or holiday), employees will receive pay on the last day of work before the regularly scheduled payday.

REST AND MEAL PERIODS

Each workday, nonexempt employees are provided with two rest periods of 15 minutes in length. The shift supervisor determines the specific time for the rest period. Since this time is counted and paid as time worked, employees must not be absent from their workstations beyond the allotted rest period time.

The meal period time allotments are as follows:

OFFICE

Full time employees are provided with one meal period of sixty (60) minutes each workday. Eating full course meals, such as breakfast or lunch, is not permitted at an employee's workstation. These meals are to be eaten in the designated areas provided. Snacks and/or drinks are occasionally permitted at an employee's workstation.

WAREHOUSE

Full time night employees will have one meal period of thirty (30) minutes each workday.

Full time day employees will have one meal period of thirty (30) minutes each workday. Supervisors will schedule meal periods to accommodate operating requirements.

TRANSPORTATION

Full time driver will have one meal period of thirty (30) minutes each workday. It will be up to the driver as to when he/she take this period.

Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

SAFETY

SAFETY IS EVERYBODY'S BUSINESS! Make everyday a safe day.

To provide a safe and healthful work environment for employees, customers, and visitors, Merchants has established a workplace safety program. Its success depends on the alertness and personal commitment of all.

Merchants provides information to employees about workplace safety and health issues through regular internal communication channels such as supervisor-employee meetings, bulletin board postings, memos, or other written communications.

All employees should observe all posted safety rules, adhere to all safety instructions provided by your supervisor and use safety equipment where required. Your workplace should be kept neat, clean and orderly. Each employee is expected to obey safety rules and to exercise caution in all work activities. Employees must immediately report any unsafe condition to the appropriate supervisor. Employees who violate safety standards, who cause hazardous or dangerous situations, or who fail to report or, where appropriate, remedy such situations, may be subject to disciplinary action, up to and including termination of employment.

In the case of accidents that result in injury, regardless of how insignificant the injury may appear, employees should immediately notify an appropriate supervisor or Human Resources. Such reports are necessary to comply with laws and initiate insurance and workers' compensation benefits procedures.

USE OF THE COMPUTER SYSTEM NETWORK

The Company's computer system and e-mail network are the property of the Company and are only to be used for business purposes. Examples of prohibited, non-business purposes include, but are not limited to:

- Use of the Company's computer system to write personal letters, resumes or other documents unrelated to the Company's business
- Use of the Company's computer system to run computer games or other personal software
- Use of the Company's computer system to copy software
- Use of the Company's e-mail network as a forum for gossip or personal communications
- Use of the Company's e-mail network to convey insensitive, improper, derogatory, offensive, insulting, threatening, or harassing language and remarks

All information, data and communications prepared or stored in the computer system or on the e-mail network are assumed to be business-related. The Company reserves the right to monitor, and will periodically monitor, the computer system and e-mail network to ensure compliance with this policy and to maintain efficient use of the computer system and e-mail network. Employees should not consider any materials stored in the computer system or any e-mail communications to be private.

USE OF PHONE AND MAIL SYSTEMS

Employees will be required to reimburse Merchants for any charges resulting from their personal use of the telephone.

The use of the Company's paid postage for personal correspondence is permitted, if you reimburse Merchants for postage costs.

SMOKING

In keeping with the Company's intent to provide a safe and healthful work environment, smoking is prohibited except in pre-designated areas. Smoking is only allowed on personal time or break time.

This policy applies equally to all employees, customers, and visitors.

PROGRESSIVE DISCIPLINE POLICY

Merchants recognizes that its own best interest lies in ensuring fair treatment of all employees and in making certain that disciplinary actions are prompt, uniform and impartial. The major purpose of any disciplinary action is to correct the problem, prevent recurrence, and prepare the employee for satisfactory service in the future.

Disciplinary action may call for any of four steps - verbal warnings, written warnings, suspension with or without pay, or termination of employment - depending on the severity of the problem and the number of occurrences.

Progressive discipline means that, with respect to most disciplinary problems, these steps will normally be followed: a first offense may call for a verbal or written warning; a second offense may be followed by a written warning or suspension; and still another offense may then lead to termination of employment. Merchants recognizes that there are certain types of employee problems that are serious enough to justify either a suspension or termination of employment, without going through the usual progressive discipline steps.

By using progressive discipline, we hope that most employee problems can be corrected at an early stage, benefiting both employee and Merchants.

ATTENDANCE AND PUNCTUALITY

It is expected that all employees report to work every workday, and it is also expected that they report to work at the scheduled reporting time.

Merchants also realizes that at times employees will not be able to work because of illness or injury or will be late for some unforeseen reason.

When employees are going to be late or absent, it is their responsibility to personally call the Company and report the reason to their immediate supervisor. Certain special circumstances may exist that prevent an employee to personally call their immediate supervisor. In these special instances, the employee should make sure someone notifies his or her immediate supervisor of the absence. If an employee needs to leave early, they must notify their supervisor prior to leaving the work premises.

Excess or continued tardiness, early departures and absenteeism can result in disciplinary action up to and including discharge, based upon the following guidelines.

Employee's absences during introductory period:

- 1st absence - verbal warning
- 2nd absence - written notice
- 3rd absence - termination

Full time or part time employee's tardies, early departures and absences are calculated in a rolling calendar year. Example: Occurrence in November 2004 would drop off in November 2005. Absences will be treated separately from early departures and tardies.

- 1st occurrence - verbal warning
- 2 occurrences - written warning
- 3 occurrences - 3-day suspension
- 4 occurrences - termination

If an employee fails to call his/her supervisor for two consecutive days, the employee will be considered to have voluntarily quit.

EMPLOYEE CONDUCT AND WORK RULES

To assure orderly operations and provide the best possible work environment, Merchants expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment. Please note that this is not an exhaustive list.

- Theft or inappropriate removal or possession of property
- Falsification of time keeping records
- Fighting or threatening violence
- Boisterous or disruptive activity
- Negligence or improper conduct leading to damage of employer owned or customer-owned property
- Insubordination or other disrespectful conduct
- Violation of safety or health rules
- Smoking in prohibited areas
- Sexual or other unlawful harassment
- Possession of dangerous or unauthorized materials, such as explosives or firearms
- Excessive absenteeism or any absences without notice
- Unauthorized use of telephones, mail system, or other employer owned equipment
- Unauthorized disclosure of business "secrets" or confidential information
- Violation of personnel policies
- Distribution of pornographic materials
- Unsatisfactory performance or conduct

NO HARASSMENT

Merchants does not and will not tolerate any type of harassment of our employees, applicants, customers, or vendors. The term "harassment" includes, but is not limited to, slurs, jokes, and other verbal, graphic, physical, or electronic (e-mail) conduct relating to an individual's race, color, gender, religion, national origin, citizenship, age, or disability. "Harassment" also includes sexual advances, requests for sexual favors, offensive touching, and other verbal, graphic, physical, or electronic (e-mail) actions of a sexual nature involving either members of the opposite or the same sex.

Note: Employees who violate this policy are subject to disciplinary action up to, and including the termination of their employment.

Note: Even if an employee does not complain, it is a manager's responsibility to investigate any conduct that is reported to the manager, or of which the manager is aware, if there is any possibility that this conduct violates our policy. All such incidents should be immediately reported to Human Resources.

If an employee feels that they are being harassed in any way by an employee, manager, customer, or vendor, they must immediately make their feelings known to their manager or Human Resources:

- The matter will be thoroughly investigated, and where appropriate, disciplinary action will be taken.
- If the employee does not feel they can discuss the matter with their manager, or if they are not satisfied with the way the complaint has been handled, they may contact Human Resources.
- The employee will not be penalized in any way for reporting such conduct concerning themselves or another person.

Employees should not assume that the Company is aware of the problem. It is the employee's responsibility to bring complaints and concerns to the attention of management so that they may be resolved. Note the following:

- The Company understands that there are issues that affect an employee's work environment that they may not be comfortable reporting to their manager. For these issues, employees can report these issues directly to Human Resources or to any other manager at the Company.

- Managers who receive complaints must immediately inform Human Resources.
- Human Resources will investigate the allegation and take the appropriate action to protect the rights of the charging employee and the charged employee, and to carry out the legal obligations of Merchants.
- Investigations will be conducted as quickly as possible and all concerned parties will be notified of the findings in writing.

If an investigation confirms that harassment has occurred, Merchants will take corrective action, up to and including the immediate termination of the offending employee(s). Findings of assault or the threat of assault will result in immediate termination.

Note that certain information, including the identity of principle parties and specific allegations raised, will likely be disclosed during the course of investigation to potential witnesses, Human Resources Department employees, and Merchants management team.

Note: Merchants will not tolerate retaliation against any employee for cooperating in an investigation or for reporting an incident of harassment.

State laws vary with regard to posting, training, and reporting avenues for harassment. If you have any questions regarding these issues in your area, please contact Human Resources.

WORKPLACE VIOLENCE

Merchants recognizes that workplace violence is a growing concern across the country. The Company is committed to providing a safe, violence-free workplace and strictly prohibits employees, consultants, customers, visitors or anyone else on Company property or engaging in a Company-related activity from behaving in a violent or threatening manner.

Workplace violence includes:

- Threats of any kind
- Threatening, physically aggressive, or violent behavior (e.g., intimidation of or attempts to instill fear in others, etc.)
- Other behavior that suggests a propensity towards violence, including belligerent speech, excessive arguing or swearing, sabotage, or threats of sabotage of Company property, or a refusal to follow Company policies and procedures
- Defacing Company property or causing physical damage to the facilities
- Bringing weapons or firearms of any kind on Company property, or while conducting Company business

Employees are required to report any instances of workplace violence to their supervisors or Human Resources. All reports will be taken seriously and will be promptly and thoroughly investigated.

DRUG AND ALCOHOL POLICY

Merchants' is concerned about the effect of illegal drug use and the abuse of alcohol (commonly defined as "substance abuse") upon the health and safety of its employees. Substance abuse leads to increased accidents, theft, unnecessary medical claims, and inattention to work duties and responsibilities. Substance abuse also leads to the destruction of an employee's health and adversely affects their personal life.

Merchants' employees are prohibited from possessing, using, selling, or purchasing any alcoholic beverages or other mind-altering substances on Company property. In light of these concerns, the Company intends to maintain a work place that is free of the problems associated with substance abuse. The Company also encourages the rehabilitation of employees and applicants with problems associated with the abuse of drugs and alcohol.

All drivers must comply with the Federal Motor Carrier Safety Regulations.

PERSONAL APPEARANCE

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image Merchants presents to customers and visitors.

During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, employees will not be compensated for the time away from work.

The following will apply to all employees:

1. All wearing apparel must be neat and clean, whether it is required uniform or otherwise.
2. All shirttails must be worn inside trousers.
3. If an employee has a beard, it must be kept neatly trimmed and clean. If an employee has long hair, it must be kept clean.
4. Every employee should realize the importance of personal hygiene, since we are handling and selling food product. Body odors, dirty hands, faces, even fingernails, can be an indicator of the quality of our products. Personal pride alone should prevent any of these from reflecting on our product. Extreme care should be taken to prevent such.

UNIFORMS

The following will apply to Drivers, Warehouse and Shipping Personnel:

1. Delivery Drivers must wear Merchants uniform shirts during work hours.
2. Shoes should be a dress or work shoe. Certain canvas shoes are acceptable if made on the order of a work shoe. Tennis shoes, sneakers, track shoes, etc., are not permissible.
3. Shoes, like uniforms should be clean.
4. Employees who prefer to wear caps, should wear Merchants Caps.

OFFICE DRESS CODE

The following will not be permitted as office attire:

1. Midriff tops or tops that do not meet your pants or skirt.
2. Shorts (Professional Business Skort Sets are okay)
3. T-shirts (with or without writings or slogans)
4. Tennis Shoes
5. Shirts with no collar (Men)
6. Blue Jeans

Friday has usually been a relaxed day in the office and will continue to be. Neatness is still required. Blue jeans may be worn on Fridays only as long as they are neat in appearance.

Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between Merchants and any of its employees. The provisions of the handbook have been developed at the discretion of management and may be amended or canceled at any time, at Merchants' sole discretion.

I ACKNOWLEDGE THAT I HAVE RECEIVED MERCHANTS FOODSERVICE HANDBOOK AND FURTHER ACKNOWLEDGE THE IF I WISH ADDITIONAL INFORMATION OR DETAILS OF PERSONNEL POLICIES I HAVE THE FOLLOWING OPTIONS:

1. CONTACT HUMAN RESOURCES LOCATED IN THE HATTIESBURG OFFICE AT 601-584-4046.
2. REFER TO PRINTED MANUAL POSTED ON BULLETIN BOARD IN THE CENTRAL OFFICE AND / OR THE BRANCH OFFICE BULLETIN BOARDS.

EMPLOYEE SIGNATURE

WITNESSED BY

DATE

1/01/05

04/03/2007 16:21 2562342044

DERRICK BLYTHE

PAGE 06

Page 1 of 1

Steve Adams

From: Steve Adams
Sent: Thursday, May 28, 2005 11:03 AM
To: Jimmy Triggs; Merle Rester
Cc: Hal Henson
Subject: Equipment Needs

Jimmy,

I sent you the information (Interdepartmental Mail) from Carolina Handling on what has been done so far and what remains to be done on our equipment. As we discussed yesterday, some items can wait to be repaired, while all safety issues need to be addressed ASAP. However, when I signed the write-ups, the Safety Issues are high-lighted in red and I had to initial that I was made aware of them. Since I am not the person responsible for making the call on these expenditures, I need you to instruct me on how to proceed in the continued use or non-use of these pieces of equipment. Please respond.

Thanks,
Steve

**DEFENDANT'S
EXHIBIT**

18

7/7/2005

(21)

19

DATE 7/01/2005 10:49 AM
PRGR78 USRR: MRLAHIZ

MERCHANTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 1
OS, Inc!

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
** DIV :								
DEPT#- 12719 Receiving								
16076	WILLIAM P CARTER		BUILDING MAINT.	FULL-TIME	7/15/03 H	6/15/04	12	FIRE-ATTENDANCE
16778	RANDY W DAVIS		LIFT-PIR	FULL-TIME	2/18/05 H	3/23/05	1	QUIT-NO NOTICE
19702	CASSANDRA S DENTON		RECLERK	FULL-TIME	7/22/02 H	12/12/03	17	FIRE-ATTENDANCE
16792	TERRI E DEVER		RECEIVING	FULL-TIME	2/25/05 H	5/25/05	3	QUIT-NO NOTICE
16342	ANGELIA M DIXON		INV CONTROL CLERK	FULL-TIME	2/20/04 H	3/04/05	13	RESIGNED W/NOTICE
16760	BEADFORD H EDWARDS		RETURNS	FULL-TIME	1/30/05 H	2/20/05	1	QUIT-NO NOTICE
16630	JERRY B ESTRADA		RECEIVING	FULL-TIME	10/05/04 H	3/18/05	6	RESIGNED W/NOTICE
16077	DAVE P GALASSI		RECEIVING	FULL-TIME	7/16/03 H	9/07/03	2	QUIT NO CALL/NO SHOW
19617	LLOYD C GODWIN		DAY SUP	FULL-TIME	10/02/01 H	7/23/03	22	PIRED
16770	STEPHANIE M GRAY		LIFT-PIR	FULL-TIME	2/08/05 H	2/14/05	0	QUIT-NO NOTICE
16848	CYNTHIA W HATCHER		LIFT-PRZ	FULL-TIME	4/06/05 H	5/23/05	1	FIRE-ATTENDANCE
15946	YVONNE HUGGINS		RECEIVING	FULL-TIME	2/10/03 H	3/04/03	1	FIRE-ATTENDANCE
19713	TRAVIS W JACKSON		BLDMAINT	FULL-TIME	8/28/02 H	4/28/03	9	QUIT NO CALL/NO SHOW
16078	THOMAS B KELLEY		RECEIVING	FULL-TIME	7/16/03 H	1/03/05	19	QUIT-NO NOTICE
15996	TERRANCE KENNEDY		RECEIVING	FULL-TIME	4/07/03 H	7/20/04	15	
19639	SENECA KINSEY		TMLDR	FULL-TIME	11/26/01 H	9/16/03	23	TRANSFER TO SALARY
16259	TRAVIS E MARLER		LIFT-PRZ	FULL-TIME	12/08/03 H	1/23/04	2	QUIT-NO NOTICE
16144	JERIE L MCDANIEL		RECEIVING	FULL-TIME	5/15/03 H	11/13/03	2	FIRE-ATTENDANCE
16584	DANTE G MILLINER		LIFT-DRY	FULL-TIME	9/07/04 H	3/02/05	7	QUIT-NO NOTICE
16814	MATTHEW C MORENN		LIFT-DRY	FULL-TIME	3/15/05 H	5/23/05	2	RESIGNED W/NOTICE
16430	CHRISTOPHER H POWELL		RETURNS	FULL-TIME	6/21/04 H	1/07/05	8	RESIGNED W/NOTICE
15696	LINDA S REEVES		RECEIVING	FULL-TIME	7/09/02 H	1/30/03	7	FIRE-INSUBORDINANT
16085	CHRISTOPHER E REID		RECEIVING	FULL-TIME	7/21/03 H	11/14/03	4	QUIT-NO NOTICE

(10)

DATE 7/01/2005 10:49 AM
PROR78 USER: MELANIE

RECHARTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 2
08, Inc!

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
** DIV : 19								
DEPT#- 12719 Receiving								
19608	DONALD C RUSH		RECEIVING	FULL-TIME	9/17/01 H	3/30/03	19	QUIT-NO NOTICE
16596	EARNEST D SCOTT		DRIVER CHECK IN	FULL-TIME	9/12/04 H	6/06/05	10	FIRE-THFT
16650	KEVIN D SELIX		LIFT-DRY	FULL-TIME	10/18/04 H	1/03/05	4	QUIT-NO NOTICE
16251	VANESSA N SOWELL		RECEIVING	FULL-TIME	12/03/03 H	2/23/05	15	FIRE-ATTENDANCE
16239	TREMAVNE A STOUDEMIRE		LIFT-DRY	FULL-TIME	11/18/03 H	12/15/03	1	FIRE-DRUG SCREEN
16212	JOHN T TINSLEY JR.		RECEIVING	FULL-TIME	10/27/03 H	10/13/04	12	QUIT NO CALL/NO SHOW
16652	DEFRIO M VARNER		RECEIVING	FULL-TIME	10/18/04 H	2/09/05	5	QUIT-NO NOTICE
16331	CHRISTOPHER WALDEN		FORKLIFT	FULL-TIME	2/09/04 H	2/20/04	0	QUIT NO CALL/NO SHOW
16540	SATACO WARE		SEL-PIR	FULL-TIME	8/12/04 H	10/01/04	2	FIRE-ATTENDANCE
16573	FRANKLIN L WASHINGTON		FORKLIFT	FULL-TIME	9/02/04 H	9/14/04	0	QUIT-NO NOTICE
16381	WENDELL K WRIGHT		LIFT-FEZ	FULL-TIME	3/29/04 H	8/27/04	5	RESIGNED W/NOTICE
19559	RHONDA ZAFFINA		RECCLERK	FULL-TIME	6/05/01 H	1/29/03	20	QUIT-NO NOTICE
** DEPT: 12719 TOTALS **					ACTIVE EMPLOYEES =	15	TERMINATED EMPLOYEES =	35
** DIV : 19					TOTALS **	ACTIVE EMPLOYEES =	15	TERMINATED EMPLOYEES =
*** COMPANY 02 TOTALS ***					ACTIVE EMPLOYEES =	15	TERMINATED EMPLOYEES =	35
					PERCENT TURNOVER =	233.33 %		
					PERCENT TURNOVER =	233.33 %		
					PERCENT TURNOVER =	233.33 %		

(11)

DATE 7/01/2005 10:49 AM
PROR78 USER: MELANIE

MERCHANTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 1
OS, Inc!

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
** DIV :								
DEPT#- 13419 Shipping								
19715	AARON T AKERS		SEL-DRY	FULL-TIME	8/29/02 H	5/12/03	10	QUIT NO CALL/NO SHOW
15858	AGNES B ANELLO		CHECKER	FULL-TIME	4/13/05 H	4/24/05	0	FIRED-ATTENDANCE
19437	JOSEPH P BARBOUR		TM LDR	FULL-TIME	8/15/00 H	12/31/04	52	TRANSFER TO SALARY
15930	LEON BARLEY JR.		LOADER	FULL-TIME	1/18/03 H	2/17/03	1	FIRED-ATTENDANCE
16859	CASSANDRA A BOGAN		CHECKER	FULL-TIME	4/12/05 H	5/24/05	1	QUIT NO CALL/NO SHOW
16050	CHARLES D BOLDING		LOADER	FULL-TIME	7/09/03 H	8/10/03	1	QUIT NO CALL/NO SHOW
16288	SOLOMON T BOSTIC		SEL-FRZ	FULL-TIME	1/13/04 H	3/07/04	2	QUIT-NO NOTICE
16404	MARK A BRADLEY		SEL-FRZ	FULL-TIME	4/18/04 H	5/09/04	1	QUIT-NO NOTICE
19725	BILLY J BRADSHAW		SEL-FRZ	FULL-TIME	9/22/02 H	1/12/03	5	QUIT-NO NOTICE
16668	BILLY J BRADSHAW		SEL-FRZ	FULL-TIME	10/25/04 H	12/16/04	2	FIRED-COMPANY POLICY
15977	JONATHAN L BROWN		SEL-FRZ	FULL-TIME	3/16/03 H	4/21/03	1	QUIT NO CALL/NO SHOW
16119	MARLON K BROWN		SEL-DRY	FULL-TIME	8/14/03 H	1/29/04	6	QUIT NO CALL/NO SHOW
16200	RONALD D BROWN		LOADER	FULL-TIME	10/19/03 H	10/24/03	0	FIRED-POOR PERFORMAN
16071	SONYA R BRYANT		CHECKER	FULL-TIME	7/14/03 H	9/05/03	2	RESIGNED W/NOTICE
15907	MARK A CALLINES		SEL-DRY	FULL-TIME	1/05/03 H	1/31/03	0	QUIT-NO NOTICE
16797	TERRANCE A CASH		SEL-FRZ	FULL-TIME	3/02/05 H	3/07/05	0	QUIT NO CALL/NO SHOW
16516	GREGORY L CASON		SEL-FRZ	FULL-TIME	7/25/04 H	8/17/04	1	QUIT NO CALL/NO SHOW
16796	RICHARD K CHAMBERS		SEL-FRZ	FULL-TIME	2/28/05 H	3/14/05	1	QUIT-NO NOTICE
16442	ROBERT L CHANEV, JR		LOADER	FULL-TIME	7/01/04 H	7/08/04	0	FIRED-ATTENDANCE
16720	WILLIE L CHATTMAN		LOADER	FULL-TIME	12/06/04 H	4/21/05	5	QUIT-NO NOTICE
16222	WILLIE L CHATTMAN JR.		LOADER	FULL-TIME	11/02/03 H	4/14/04	6	QUIT NO CALL/NO SHOW
16484	COREY L CHILDERS		LOADER	FULL-TIME	7/19/04 H	9/09/04	2	FIRED-ATTENDANCE
16714	DANNY C COOPER		LIFT-FRZ	FULL-TIME	12/02/04 H	4/04/05	5	QUIT-NO NOTICE

12

DATE 7/01/2005 10:49 AM
PROR78 USER: MELANIE

EMPLOYEE NUMBER EMPLOYEE NAME

** DIV : 19

DEPT#- 13419 Shipping

16515 CHARLES B COTTRELL
16070 CHRISTINE H CRAIG
15912 DEDERICK A CROOM
16758 JAMES M DAVIS
16049 THOMAS C DAVIS
16667 THOMAS C DAVIS
16817 THOMAS C DAVIS
19396 KATHY L DEAYERS
16177 WARREN DENNIS
16088 MICHAEL C DREHMUS
16755 PHILLIP R DOWNS
16029 JAMES M DUTTON
16142 JAMES B EDWARDS
16340 JAMIE L EDWARDS
19744 MICHAEL W PAY
16407 ANTOINE L FEAGIN
16256 GREGORY S FLOYD
16763 JACOB P FOSTER
16730 ADRAIN T FREEMAN
16141 CONSTANCE R FREEMAN
15994 JERRY L FULMER
16122 READIS J GARNER III
16197 BRET GILMORE

MERCHANTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 2
OS, Incl

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYER STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
16515	CHARLES B COTTRELL		SEL-FRZ	FULL-TIME	7/25/04 H	1/02/05	7	QUIT-NO NOTICE
16070	CHRISTINE H CRAIG		CHECKER	FULL-TIME	7/15/03 H	9/23/03	2	QUIT-NO NOTICE
15912	DEDERICK A CROOM		SEL-DRY	FULL-TIME	1/14/03 H	3/05/03	2	QUIT NO CALL/NO SHOW
16758	JAMES M DAVIS		SEL-FRZ	FULL-TIME	1/23/05 H	2/06/05	1	QUIT-NO NOTICE
16049	THOMAS C DAVIS		SEL-DRY	FULL-TIME	7/09/03 H	10/15/03	3	QUIT-NO NOTICE
16667	THOMAS C DAVIS		SEL-DRY	FULL-TIME	10/24/04 H	2/09/05	5	FIRED-INSUBORDINANT
16817	THOMAS C DAVIS		SEL-DRY	FULL-TIME	3/14/05 H	6/08/05	3	QUIT-NO NOTICE
19396	KATHY L DEAYERS		SEL-FRZ	FULL-TIME	7/09/00 H	9/25/03	38	QUIT NO CALL/NO SHOW
16177	WARREN DENNIS		LOADER	FULL-TIME	10/07/03 H	11/11/03	1	QUIT-NO NOTICE
16088	MICHAEL C DREHMUS		SEL-FRZ	FULL-TIME	7/21/03 H	8/10/03	1	QUIT NO CALL/NO SHOW
16755	PHILLIP R DOWNS		LOADER	FULL-TIME	1/23/05 H	6/20/05	5	QUIT NO CALL/NO SHOW
16029	JAMES M DUTTON		SEL-FRZ	FULL-TIME	6/22/03 H	8/13/03	2	FIRED-PREV ACCIDENT
16142	JAMES B EDWARDS		LOADER	FULL-TIME	9/11/03 H	10/01/03	1	FIRED-POOR PERFORMAN
16340	JAMIE L EDWARDS		SEL-DRY	FULL-TIME	2/18/04 H	4/04/04	2	QUIT NO CALL/NO SHOW
19744	MICHAEL W PAY		SHIPCLK	FULL-TIME	12/01/02 H	6/10/03	7	QUIT NO CALL/NO SHOW
16407	ANTOINE L FEAGIN		LOADER	FULL-TIME	4/20/04 H	5/31/04	1	FIRED-ATTENDANCE
16256	GREGORY S FLOYD		LOADER	FULL-TIME	12/04/03 H	12/14/03	0	QUIT-NO NOTICE
16763	JACOB P FOSTER		LOADER	FULL-TIME	2/01/05 H	2/24/05	0	FIRED-POOR PERFORMAN
16730	ADRAIN T FREEMAN		SEL-DRY	FULL-TIME	12/13/04 H	1/26/05	2	QUIT-NO NOTICE
16141	CONSTANCE R FREEMAN		CHECKER	FULL-TIME	9/09/03 H	9/15/03	0	QUIT NO CALL/NO SHOW
15994	JERRY L FULMER		LOADER	FULL-TIME	3/30/03 H	6/13/05	27	RESIGNED N/NOTICE
16122	READIS J GARNER III		SANITATI	FULL-TIME	8/20/03 H	2/04/05	19	RESIGNED N/NOTICE
16197	BRET GILMORE		CHECKER	FULL-TIME	10/15/03 H	11/10/03	1	FIRED-ABANDONED JOB

12

DATE 7/01/2005 10:49 AM
PROR78 USER: MELANIE

PAGE 02

MERCHANTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 3
OS, INC!

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
** DIV : 19								
DEPT#- 13419 Shipping								
16079	HOWARD A GILMORE		SEL-DRY	FULL-TIME	7/20/03 H	7/11/03	0	FIRE-ATTENDANCE
16464	DANIEL J GLOVER		LOADER	FULL-TIME	7/11/04 H	8/05/04	1	FIRE-POOR PERFORMAN
19695	IVAN E GORDON		SEL-DRY	FULL-TIME	7/08/02 H	3/09/03	9	FIRE-ATTENDANCE
16158	MICAH A GRISHAM		LOADER	FULL-TIME	9/23/03 H	11/13/03	2	QUIT-NO NOTICE
16027	DULCE M GUTIERREZ		CHECKER	FULL-TIME	6/22/03 H	10/13/03	4	QUIT-NO NOTICE
16445	ROBERT J GUYON		SEL-FRZ	FULL-TIME	7/05/04 H	8/11/04	1	FIRE-ATTENDANCE
16296	KEVIN V HARRIS		SEL-PIR	FULL-TIME	1/11/04 H	2/11/04	1	QUIT NO CALL/NO SHOW
16884	RODNEY C HARTLEY		SEL-FRZ	FULL-TIME	4/24/05 H	5/10/05	1	QUIT NO CALL/NO SHOW
19440	WILLIAM R HAYES		SEL-PIR	FULL-TIME	8/27/00 H	9/12/03	37	RESIGNED W/NOTICE
15995	JAMES R HEADLEY		LOADER	FULL-TIME	3/31/03 H	6/09/03	3	QUIT NO CALL/NO SHOW
16028	BRADLEY D HODGES		LOADER	FULL-TIME	6/22/03 H	7/07/03	1	QUIT-NO NOTICE
16824	THOMAS HOSECLOTH		SEL-DRY	FULL-TIME	3/09/05 H	3/29/05	0	QUIT-NO NOTICE
19746	ERIC M HOWARD		SEL-FRZ	FULL-TIME	12/01/02 H	2/27/04	15	RESIGNED W/NOTICE
16853	ANTWAN D HODSON		SEL-FRZ	FULL-TIME	4/07/05 H	5/08/05	1	FIRE-POOR PERFORMAN
16490	JEREMY C INGRAM		SEL-FRZ	FULL-TIME	7/20/04 H	10/27/04	3	QUIT-NO NOTICE
16253	NATHAN V JEFFERSON		SEL-FRZ	FULL-TIME	12/03/03 H	12/08/03	0	QUIT NO CALL/NO SHOW
16264	NATHANIAL V JEFFERSON		SEL-FRZ	FULL-TIME	12/03/03 H	12/08/03	0	QUIT NO CALL/NO SHOW
16299	CEDRIC M JOHNSON		LOADER	FULL-TIME	1/13/04 H	4/04/04	3	QUIT NO CALL/NO SHOW
16401	JOHNATHAN JOHNSON		SEL-FRZ	FULL-TIME	4/15/04 H	5/03/04	1	QUIT-NO NOTICE
16333	WILLIAM B JOHNSON III		SEL-FRZ	FULL-TIME	2/11/04 H	4/11/04	2	QUIT NO CALL/NO SHOW
16553	FREDTON T JONES		LOADER	TEMPORARY	8/18/04 H	12/12/04	4	QUIT NO CALL/NO SHOW
19674	JIMMY L KENDRICK		TMLDR	FULL-TIME	6/27/02 H	12/31/04	30	TRANSFER TO SALARY
16278	JOE L KENNEDY		SEL-FRZ	FULL-TIME	1/04/04 H	4/27/04	3	QUIT-NO NOTICE

14

DERRICK BLYTHE

2562342044

04/03/2007 16:21

DATE 7/01/2005 10:45 AM
PROR78 USER: MELANIE

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBR MONTHS	TERMINATION REASON
** DIV : 19								
DEPT#- 13419 Shipping								
16595	JOE L KENNEDY		SEL-FRZ	TEMPORARY	9/13/04 H	2/07/05	6	QUIT-NO NOTICE
16258	LEON KENNEDY		SEL-DRY	FULL-TIME	12/09/03 H	8/12/04	5	RESIGNED W/NOTICE
16169	FRANKIE L KNIGHT		SEL-FRZ	FULL-TIME	9/28/03 H	10/01/03	1	FIRHD-ATTENDANCE
16159	CARMEN M LAMAR		SHIPCLK	PART-TIME	9/21/03 H	10/26/03	1	QUIT NO CALL/NO SHOW
15953	ANTHONY M LAW		LOADER	FULL-TIME	2/28/03 H	5/29/03	3	RESIGNED W/NOTICE
16585	SAMMY L LEWIS		SEL-DRY	FULL-TIME	8/25/04 H	9/27/04	1	QUIT NO CALL/NO SHOW
16138	JAMES B LYKES		CHECKER	FULL-TIME	9/10/03 H	10/13/03	1	FIRHD-POOR PERFORMAN
16010	BRANDON H MATHIS		SEL-DRY	FULL-TIME	5/21/03 H	2/05/04	10	QUIT-NO NOTICE
19747	ELLIS R MCWILLIAN		LOADER	FULL-TIME	12/10/02 H	1/13/03	2	FIRHD-POOR PERFORMAN
16707	CATHY A MIMS		LIFT-DRY	FULL-TIME	11/21/04 H	3/20/05	5	QUIT-NO NOTICE
16587	MICHAEL E MOORE		SEL-DRY	FULL-TIME	9/05/04 H	10/03/04	1	QUIT-NO NOTICE
16362	BRANDON G MORROW		SEL-DRY	FULL-TIME	3/09/04 H	6/22/04	3	QUIT-NO NOTICE
16872	JAMES L MORROW		LIFT-FRZ	FULL-TIME	4/17/05 H	4/25/05	0	FIRHD-PROPERTY DAMAG
16489	HENRY T MUNN		LOADER	FULL-TIME	7/19/04 H	1/19/05	7	FIRHD-COMPANY POLICY
16564	JASON PARKER		SEL-DRY	FULL-TIME	8/23/04 H	8/29/04	0	QUIT NO CALL/NO SHOW
16719	JEROME PARKER		SEL-DRY	FULL-TIME	12/05/04 H	2/17/05	3	QUIT NO CALL/NO SHOW
19496	SANDRA G PARKER		SEL-PIR	FULL-TIME	11/11/00 H	1/05/04	39	QUIT NO CALL/NO SHOW
16335	RONALD PETTWAY		SEL-DRY	FULL-TIME	2/16/04 H	3/15/04	1	QUIT-NO NOTICE
16757	PATRICK J PHELPS		LIFT-FRZ	FULL-TIME	1/24/05 H	2/01/05	1	QUIT-NO NOTICE
15916	CEDRIC D PRICE		LOADER	FULL-TIME	1/20/03 H	2/24/03	1	FIRHD-ATTENDANCE
16527	ERIK RAY		LIFT-FRZ	FULL-TIME	8/03/04 H	10/03/04	2	QUIT-NO NOTICE
16807	CHRIS G REDMON		CHECKER	FULL-TIME	3/08/05 H	3/11/05	0	QUIT NO CALL/NO SHOW
16867	FARRIN D REED		SEL-FRZ	FULL-TIME	4/14/05 H	3/25/05	1	QUIT NO CALL/NO SHOW

15

DATE 7/01/2005 10:49 AM
PR078 USER: MELAWIR

MERCHANTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 5
OS, Inc.

EMPLOYEE NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
** DIV : 19								
DEPT#- 13419 Shipping								
15989	KEINO S RHED		LOADER	FULL-TIME	3/21/03 H	6/15/03	3	FIRE-ABANDONED JOB
19739	CHRISTOPHER B ROBERTS SR.		LOADER	FULL-TIME	11/10/02 H	1/13/03	3	QUIT NO CALL/NO SHOW
19550	CHARLES ROBINSON		LIFT-DRY	FULL-TIME	3/20/01 H	10/16/03	31	QUIT-NO NOTICE
16563	NEAL ROBINSON		LOADER	FULL-TIME	8/23/04 H	9/26/04	1	FIRE-POOR PERFORMAN
16485	TYRONNE ROBINSON		LOADER	FULL-TIME	7/19/04 H	7/25/04	0	FIRE-POOR PERFORMAN
16575	DONALD R ROLLINS		SEL-DRY	FULL-TIME	9/01/04 H	9/12/04	0	QUIT NO CALL/NO SHOW
16653	KELVIN ROLLINS		SEL-DRY	FULL-TIME	10/17/04 H	10/31/04	0	QUIT NO CALL/NO SHOW
16254	DARRICK S SATCHEL		LOADER	FULL-TIME	12/03/03 H	12/05/03	0	QUIT NO CALL/NO SHOW
16815	MORGAN W SCARBROUGH		LIFT-FRZ	FULL-TIME	3/07/05 H	3/25/05	0	QUIT NO CALL/NO SHOW
16267	BARNES D SCOTT		SEL-FRZ	FULL-TIME	12/17/03 H	5/09/04	6	RESIGNED W/NOTICE
19724	JAMES A SECKMAN		SEL-FRZ	FULL-TIME	9/22/02 H	11/28/03	14	QUIT-NO NOTICE
16109	JASON L SHILL		SEL-FRZ	FULL-TIME	7/31/03 H	8/24/03	1	RESIGNED W/NOTICE
16216	STEVEN M SHIMEX		CHECKER	FULL-TIME	10/28/03 H	11/24/03	1	QUIT NO CALL/NO SHDW
19647	JOHN W SHIVER		LIFT-FRZ	FULL-TIME	12/11/01 H	3/07/03	16	RESIGNED W/NOTICE
16777	KRISTI G SHUFF		CHECKER	FULL-TIME	2/13/05 H	4/07/05	2	FIRE-ABANDONED JOB
18679	TERRY A SIMS		LIFT-FRZ	FULL-TIME	6/30/02 H	10/02/03	16	QUIT-NO NOTICE
19735	JAMES M SMART		SEL-FRZ	FULL-TIME	10/30/02 H	3/09/05	30	QUIT-NO NOTICE
16463	JAMES M SMART		SEL-FRZ	FULL-TIME	11/11/04 F	4/06/05	6	QUIT-NO NOTICE
15947	GREGORY T SMITH		SEL-FRZ	FULL-TIME	2/13/03 H	5/12/03	3	QUIT NO CALL/NO SHOW
16679	PATRICK SMITH		FORKLIFT	FULL-TIME	10/31/04 H	12/29/04	2	QUIT-NO NOTICE
16176	SCOTT T SMITH		CHECKER	FULL-TIME	10/05/03 H	1/25/04	4	RESIGNED W/NOTICE
19736	TERRY A SMITH		LOADER	FULL-TIME	10/28/02 H	5/12/03	8	QUIT-NO NOTICE
15932	PAUL K SOLTISHICK		CHECKER	FULL-TIME	2/03/03 H	4/20/03	2	QUIT NO CALL/NO SHOW

16

DATE 7/01/2005 10:49 AM
PROR78 USER: MELANIE

MERCHANTS FOODSERVICE
EMPLOYEE TURNOVER ANALYSIS REPORT
FROM 1/01/2003 TO 6/30/2005

COMPANY#: 02

PAGE 6
CS, Inc!

EMPLOYER NUMBER	EMPLOYEE NAME	JOB CLASS	TITLE	EMPLOYEE STATUS	DATE	TERM DATE	NUMBER MONTHS	TERMINATION REASON
** DIV : 19								
DEPT#- 13419 Shipping								
16127	MARTY D SPENCE		SEL-PRZ	FULL-TIME	8/28/03 H	2/18/04	7	QUIT NO CALL/NO SHOW
16297	MICHAEL P SPIGNER		LIFT-FLZ	FULL-TIME	1/11/04 H	6/06/05	17	FIRE-THIEF
15951	MICHAEL R STIGER		LIFT-DRY	FULL-TIME	2/23/03 H	5/04/03	3	QUIT-NO NOTICE
16849	KYLE L STRENGTH		SEL-DRY	FULL-TIME	4/03/05 H	5/02/05	1	QUIT NO CALL/NO SHOW
16030	SUR A TAYLOR		SHIPCLX	FULL-TIME	6/22/03 H	9/05/03	3	QUIT NO CALL/NO SHOW
16059	LONZA B TINSLEY		LOADER	FULL-TIME	7/13/03 H	5/29/04	11	QUIT-NO NOTICE
16756	LATESHIA V TUCKER		CHECKER	FULL-TIME	1/23/05 H	2/01/05	1	FIRE-ATTENDANCE
16444	JERRY J TYDS		LOADER	FULL-TIME	7/05/04 H	7/30/04	0	QUIT-NO NOTICE
19594	RODERICK M UNDERWOOD		SEL-DRY	FULL-TIME	8/07/01 H	1/21/04	30	QUIT NO CALL/NO SHOW
16405	LEROY K VARNER		LOADER	FULL-TIME	4/18/04 H	12/05/04	8	QUIT-NO NOTICE
15957	PATRICK M VINSON		LOADER	FULL-TIME	3/02/03 H	3/09/03	0	FIRE-POOR PERFORMAN
19371	RODNEY O WARE		SEL-FRZ	FULL-TIME	4/23/00 H	2/14/03	35	TRANSFER TO SALARY
16268	JARVIS L WATKINS		LOADER	FULL-TIME	12/17/03 H	1/09/04	2	FIRE-ABANDONED JOB
16346	VERDELL WATKINS		SEL-FRZ	FULL-TIME	2/22/04 H	5/20/04	3	QUIT-NO NOTICE
16214	MARCUS C WEAVER		LIFT-PRZ	FULL-TIME	10/27/03 H	5/04/04	8	QUIT NO CALL/NO SHOW
15913	HENRY J WHITE		SEL-DRY	FULL-TIME	1/15/03 H	2/09/03	1	QUIT NO CALL/NO SHOW
16369	DONNELL WILLIAMS		LIFT-DRY	FULL-TIME	3/15/04 H	5/13/04	2	FIRE-POOR PERFORMAN
16185	PHILLIP D WILLIAMS		CHECKER	FULL-TIME	10/14/03 H	6/29/04	9	RESIGNED W/NOTICE
19619	CEORIC K WORKS		CHECKER	FULL-TIME	10/14/01 H	7/09/03	22	FIRE
16117	BRODERICK S WRIGHT		LOADER	FULL-TIME	8/13/03 H	2/18/04	7	MEDICAL REASONS
16186	CURTIS W WYATT		LOADER	FULL-TIME	10/14/03 H	4/07/05	19	FIRE-ABANDONED JOB
** DEPT: 13419 TOTALS **	ACTIVE EMPLOYEES =	32		TERMINATED EMPLOYEES =	136			PERCENT TURNOVER = 425.00 %
** DIV : 19 TOTALS **	ACTIVE EMPLOYEES =	32		TERMINATED EMPLOYEES =	136			PERCENT TURNOVER = 425.00 %
*** COMPANY 02 TOTALS ***	ACTIVE EMPLOYEES =	32		TERMINATED EMPLOYEES =	136			PERCENT TURNOVER = 425.00 %

17

DEFENDANT'S
EXHIBIT

20

JULY 11, 2005

PLEASE ACCEPT THIS LETTER AS MY
NOTICE OF RESIGNATION. I WILL WORK
WHATEVER NOTICE YOU REQUIRE.

I CAN NO LONGER TOLERATE WORKING
UNDER THE STRESS & PRESSURE THAT SEEMS
TO BE A DAILY OCCURRENCE. NOTHING I
WAS TOLD DURING THE INTERVIEW PROCESS
WAS TURNED OUT TO BE TRUTHFUL. HOURS
EXPECTED OR REQUIRED TO BE WORKED,
TIME OFF, STABILITY & SECURE WORKFORCE,
ETC... LEAVING SYSCO TO COME TO WORK
WAS THE BIGGEST MISTAKE I'VE EVER
MADE.

Steve Adams

~~BRX~~

IN THE CIRCUIT COURT OF CHULTON COUNTY
AT CLANTON, ALABAMA

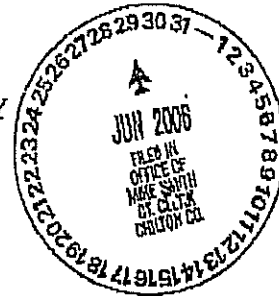
STEVE ADAMS,

Plaintiff,

v.

MERCHANTS FOOD SERVICES,
DON SUBER, ANDY MERCIER,
AND HAL HENSON,

Defendants.



DEFENDANT'S
EXHIBIT

21

COMPLAINT

COMES NOW the Plaintiff, Steve Adams, who shows unto this Honorable Court the following, to wit:

1. On or about the 15th day of August, 2004, the Plaintiff was contacted by Defendant Merchants Food Services (herein Defendant Merchants) about possible employment with Defendant Merchants. Defendant Merchants contacted Plaintiff while he was still employed with Sysco Foods.

2. Defendant Merchants persistently pursued Plaintiff, and Plaintiff finally agreed to an interview once he learned of the potential salary with the new position.

3. Defendant Hal Henson (herein Defendant Henson), General Manager, Defendant Andy Mercier (herein Defendant Mercier), Corporate Vice President, and Don Suber (herein Defendant Suber), Corporate President, interviewed Plaintiff on or about the 28th day of August, 2004. During the interview, Defendants Henson, Mercier, and Suber made certain representations about certain aspects of the employment to Plaintiff, including, but not limited to, the following:

- a. Plaintiff would only be required to work 8 to 8.5 hours a day or 40 to 42 hours a week;
- b. Plaintiff would have flexibility in setting his own hours;
- c. Plaintiff would only have to work a few nights on the night shift to get acquainted with that shift and the crew working that shift;
- d. Plaintiff would only have to work two (2) Saturdays per year for the purpose of physical inventory, and if Plaintiff did have to work a Saturday for anything other than the purpose of the inventory, he would be compensated with a day off; and
- e. Plaintiff was told that he would not have to worry about vacation time at Merchants and that he would not have to wait the usual 12 months before receiving time off, since he was giving up 17 days of vacation a year with his then current employer, Sysco – Defendant Henson told Plaintiff that he would allow him to take vacation time.

4. After an official offer of employment, including salary, was made to Plaintiff, he decided to accept the offer extended by Defendant Merchants, based on the aforementioned representations made by the Defendants to Plaintiff.

5. Once Plaintiff accepted employment with Defendant Merchants and began his tenure there, he learned that the representations that Defendants had made to him during his interview (§ 3, supra) were false and misleading, as evidenced by; but not limited to, the following:

- a. Throughout his 10.5 month employment with Merchants, Plaintiff was required to work 9 to 9.5 hours a day;
- b. Plaintiff was not allowed the flexibility of setting his own hours;
- c. Throughout his employment with Merchants, Plaintiff worked a total of 10 weeks on the night shift;
- d. Throughout his employment with Merchants, Plaintiff was required to work a total of 8 Saturdays (6 more than what Plaintiff was told

- during his interview), without being compensated either monetarily or with any time off from work, as he was promised; and
- e. Throughout his employment with Merchants, Plaintiff was not allowed any time off, as was promised during his interview.

COUNT I

6. Plaintiff hereby adopts those statements contained in the previous paragraphs and incorporates them herein as though set out in their entirety.

7. At all times relevant hereto, Defendants had a duty to Plaintiff to speak the truth regarding his possible employment with Defendant Merchants and the aforementioned aspects of his employment.

8. Defendants intentionally, recklessly, and/or innocently made certain false representations of material existing facts prior to Plaintiff's employment with Defendant Merchants, in an effort to induce Plaintiff's action on the false representations.

9. In fact, Plaintiff did act on the false representations of material existing facts.

10. As a proximate result of Defendants' false representations, Plaintiff has suffered, and continues to suffer, harm, loss, and/or damage.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount determined by an enlightened trier of fact, plus costs and interest. In addition, Plaintiff seeks any other remedies at law or equity that are available to him but not specifically set out herein.

COUNT II

11. Plaintiff hereby adopts those statements contained in the previous paragraphs one through 10 and incorporates them herein as though set out in their entirety.

12. A confidential relationship and/or special relationship existed between Plaintiff and Defendants by virtue of the superiority of Defendants' knowledge

concerning the true facts surrounding the inducement of Plaintiff and the truth concerning the aspects of Plaintiff's employment with Defendant Merchants.

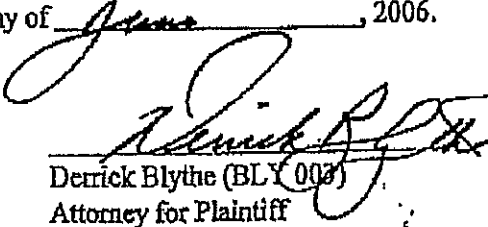
13. As a result of this relationship, Defendants had a duty to disclose the aforementioned material facts (§§ 3 and 5, *supra*).

14. As a proximate consequence of the suppression and/or misrepresentation of material facts as alleged and Plaintiff's reliance on such, Plaintiff was caused to suffer pecuniary loss, missed employment opportunities, expenses, and mental anguish.

15. Plaintiff demands punitive damages of the Defendants due to the intentional, reckless, and gross actions and/or omissions of the Defendants.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount determined by an enlightened trier of fact, plus costs and interest. In addition, Plaintiff seeks any other remedies at law or equity that are available to him but not specifically set out herein.

DATED this the 13 day of June, 2006.


Derrick Blythe (BLY 003)
Attorney for Plaintiff
126 Marshall Street
Alexander City, Alabama 35010
(256) 234-4101

EXHIBIT

2

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STEVE ADAMS,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
	)	2:06-cv-00707-ID-CSC
)	
MERCHANTS FOODSERVICE, et al.,)	
)	
Defendants.)	

DECLARATION OF ANDY MERCIER

My name is Andy Mercier. I have been President and Chief Executive Officer for Merchants Foodservice since October 2006. I am aware of the lawsuit filed by Steve Adams, and this Declaration is based on my personal knowledge.

1. Merchants Foodservice operates state-of-the-art distribution and warehousing centers in Clanton, Alabama and Jackson, Mississippi.

2. Merchants Foodservice is a 103 year old company headquartered in Hattiesburg, Mississippi.

3. I consider Merchants Foodservice to be family oriented. The company is a family owned business, and I am proud that Merchants Foodservice is family oriented. I told Mr. Adams during his interview that Merchants Foodservice was family oriented.

4. Each distribution and warehousing center has a General Manager, who is responsible for the entire center, an Operations Manager, who is responsible for the day and night shifts in the warehouse and transportation, an Inventory Control Manager, who is responsible for inventory on the day shift, a Transportation Manager, who is responsible for transportation, and a Night Manager, who is responsible for the night shift in the warehouse.

5. Merchants Foodservice opened a new facility in Clanton in July of 2000.

6. At the time of his discharge as Operations Manager in the Clanton facility on March 29, 2004, Todd Brooks was being paid \$45,000 a year, and in 2003, he received a bonus of approximately 26% of his salary.

7. The new operations manager hired in August 2004 would inherit a stable management staff because, Randy Harrington, Inventory Control Supervisor, had worked for the company since December 12, 2001, Jason Kelley, Transportation Manager, had been with the company since November 16, 2000, and Phillip Stitt, Night Manager, had worked for the company since February 9, 1997. Rodney Ware had been night shift supervisor since April 23, 2000 and Sineca Kennsey was a day shift supervisor and had worked for the company since November 16, 2001.

8. Additionally, turnover among hourly employees in the food distribution business is high, and the Clanton facility was no exception to the industry norm. Further, there was a strong core of hourly employees in the warehouse and a good core of drivers in the Clanton facility. Stitt, as Night Shift Manager, received a bonus of approximately 20% of his salary in 2003 and was on pace to receive a bonus of 13-15% of his salary in 2004.

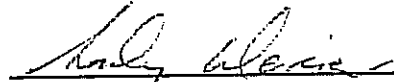
9. Moreover, sales in the Clanton facility rose from \$53,518,040 in 2002 to \$60,586,751 in 2003 and were continuing to rise in 2004.

10. The facility consistently performed well on AIB (American Institute of Baking) Audits, which are bi-annual food safety audits conducted by professionally trained auditors to ensure compliance with food safety regulations and to ensure that Merchants Foodservice provides safe, high quality food products to consumers. The Clanton facility received a Superior rating on its May 22, 2002 audit, a Superior rating on its October 11, 2002 audit, an Excellent rating on its May 22, 2003 audit, a Superior rating on its January 16, 2004 audit, and a Superior rating on its August 31, 2004 audit. (The AIB Audits are attached as Exhibits 1-5).

11. As Operations Manager, Mr. Adams had the authority to discipline the employees who reported to him, and I told him to discipline and/or discharge managers that were not performing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of June, 2007.



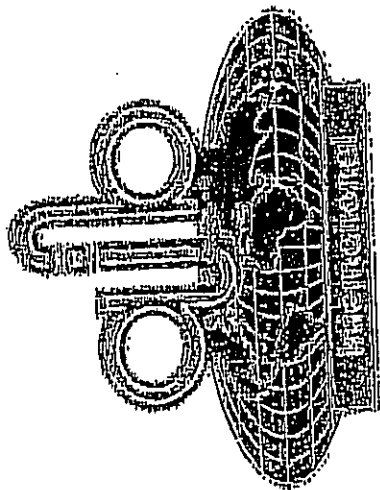
Andy Mercier

EXHIBIT

1

1-4156

Certificate of Achievement



Kansas

Manhattan

The Merchants Company Clanton, Alabama

was inspected by a qualified Food Safety Auditor on

May 22, 2002

and at that time, was found to have fulfilled the requirements of
the Department of Food Safety/Hygiene.

Virgil W. Davis

President

John L. Hardy

Vice President, Food Safety/Hygiene

D. W. Day

Chairman of the Board

John L. Hardy

Vice President, Audit Services

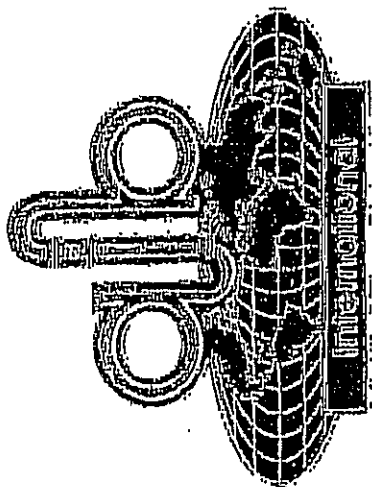
SUPERIOR

EXHIBIT

2

Certificate of Achievement

Manhattan



Kansas

*The Merchants Company
Clanton, Alabama*

was inspected by a qualified Food Safety Auditor on

October 11, 2002

*and at that time, was found to have fulfilled the requirements of
the Department of Food Safety/Hygiene.*

Virgil W. Smith

President

Mark A. Hardy

Vice President, Food Safety/Hygiene

R. W. Daley

Chairman of the Board

John A. Daley

Vice President, Audit Services

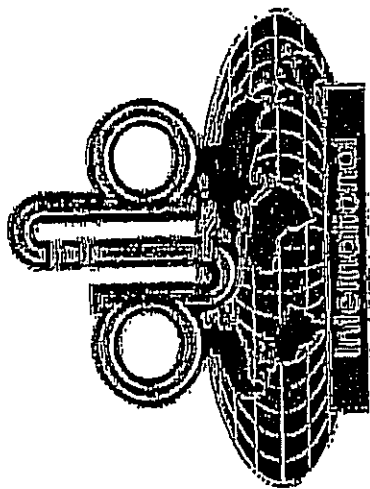
SUPERIOR

EXHIBIT

3

TO VERIFY AUTHENTICITY OF THIS CERTIFICATE, CALL AIB INTERNATIONAL AT 1-800-633-5137

Certificate of Achievement



Manhattan

Kansas

The Merchants Company
Clanton, Alabama

was inspected by a qualified Food Safety Auditor on

May 22, 2003

and at that time, was found to have fulfilled the requirements of
the Department of Food Safety/Hygiene.

Vigil W. Davis

President

Watts L. Hardy

Vice President, Food Safety/Hygiene

D. W. Daley

Chairman of the Board

J. L. Farnum

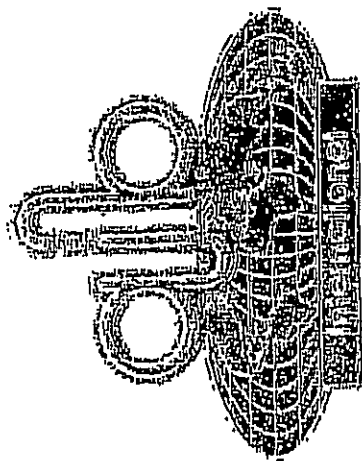
Vice President, Audit Services

EXCELLENT

EXHIBIT

4

Certificate of Achievement



Kansas

Manhattan

*Merchants Foodservice
Clanton, Alabama*

was inspected by a qualified Food Safety Auditor on

January 16, 2004

*and at that time, was found to have fulfilled the requirements of
the Department of Food Safety/Hygiene.*

SUPERIOR

Vigil W. Davis

President

Heidi L. Harty

VP, Food Safety/Hygiene

D. W. Daley

Chairman of the Board

Maureen C. O'Brien

VP, Audit/Technical Services

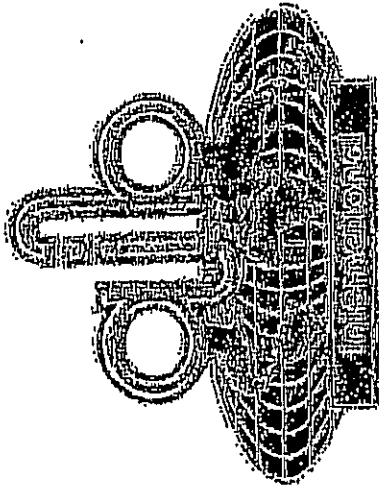
EXHIBIT

5

TO VERIFY AUTHENTICITY OF THIS CERTIFICATE, CALL AHI INTERNATIONAL AT 1-800-633-5137

14156

Certificate of Achievement



Manhattan

Kansas

*Merchants Foodservice
Clanton, Alabama*

was inspected by a qualified Food Safety Auditor on

August 31, 2004

*and at that time, was found to have fulfilled the requirements of
the Department of Food Safety/Hygiene.*

Paul E. Klover
Interim President

John A. Hendry
VP, Food Safety Education

Audrey R. Roney
Chairman of the Board

Theresa C. Olveria
VP, Audio/Technical Services

SUPERIOR

EXHIBIT

3

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STEVE ADAMS,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
	)	2:06-cv-00707-ID-CSC
MERCHANTS FOODSERVICE, et al.,)	
)	
Defendants.)	

DECLARATION OF SCOTT CASEY

My name is Scott Casey. I am the Vice President of Operations for Merchants Foodservice. I am aware of the lawsuit filed by Steve Adams, and this Declaration is based on my personal knowledge.

1. I was not involved in Mr. Adams' interview and was not working for Merchants Foodservice when Mr. Adams was hired. I started working for Merchants Foodservice in January 2005 as Director of Operations in the Jackson, Mississippi facility. By May 2005, I started to assume responsibility for operations in the Clanton, Alabama facility, which meant that Mr. Adams began reporting to me more so than he reported to Mr. Henson. In July 2005, I assumed the official title of Corporate Director of Operations. Currently, I am the Vice President of Operations for Merchants Foodservice.

2. In March 2005, Phillip Stitt quit his job as Night Manager at the Clanton facility. On April 17, 2005, we hired James Tankersley as Night Manager. As Operations Manager, Mr. Adams was expected to work with Mr. Tankersley to show him how the facility operated and to assist him on procedures on the night shift. As a result, Mr. Adams was expected to work additional nights with Mr. Tankersley. Mr. Henson and I both spoke with Mr. Adams about him working more night shifts to help Mr. Tankersley. However, Mr. Adams was never receptive to working nights and when he worked nights, he was not happy about it.

3. In 2005, Merchants Foodservice became a distributor for Kentucky Fried Chicken ("KFC"). As a distributor for KFC, the Clanton facility had to undergo a YUM audit, which is a procedure required by the corporate owner of KFC that consists of an extensive review of the facility's recording keeping and an extensive on-site inspection. To ensure that the record keeping was correct and to prepare for the inspection required significant work by the management in the facility. The first YUM audit was in June 2005, and this resulted in additional work on inventory and paperwork. In fact, I had Mr. Adams go to Jackson for two days to receive training on how to prepare and handle the YUM Audit. Mr. Adams stayed for a half day of training, and instead of returning to work the next day, Mr. Adams took the day off.

4. Mr. Adams requested two days off as we were preparing for the YUM audit. Because we were preparing for the YUM audit and because, as Operations Manager, Mr. Adams was in charge of the YUM audit, it was not an opportune time for Mr. Adams to take a vacation.

5. Under Mr. Adams' supervision, the Clanton facility struggled with its performance, and with the changes in Night Shift management, the night shift was struggling. Further, the Clanton facility was having difficulty preparing for the YUM audit. As a result, I began visiting the facility more frequently in May of 2005.

6. To improve the facility's performance, I expected my managers to work longer hours to ensure everything operated efficiently. In fact, I told Mr. Adams and the other managers in the Clanton facility that I expected them to work more hours. Unfortunately, Mr. Adams was never willing and/or cooperative about working longer hours.

7. Then, on July 11, 2005, due to the continuing problems on the Night Shift and in training the new Night Shift Manager, I proposed to Mr. Adams that he work a staggered shift of 11 a.m. to 10 p.m., until Mr. Tankersley got a better grasp of the job. A couple hours later, Mr. Adams submitted a resignation letter claiming that what he was told in the interview was not accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of June, 2007.



Scott Casey

EXHIBIT

4

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STEVE ADAMS,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
	)	2:06-cv-00707-ID-CSC
MERCHANTS FOODSERVICE, et al.,)	
)	
Defendants.)	

DECLARATION OF HAL HENSON

My name is Hal Henson. I was General Manager of Merchants Foodservice's Clanton, Alabama facility from January 25, 2002 until September 30, 2005. I am aware of the lawsuit filed by Steve Adams, and this Declaration is based on my personal knowledge.

1. I became the General Manager of the Clanton facility on January 25, 2002. As General Manager, I was responsible for the operation of the entire facility. However, I had an Operations Manager who was responsible for operations on the day and night shift and for transportation. I promoted Todd Brooks to Operations Manager shortly after I became General Manager.

2. On March 29, 2004, Brooks was discharged for misconduct, and the facility needed a new Operations Manager. The new Operations Manager would inherit an experienced staff because Randy Harrington, Inventory Control

Supervisor, Jason Kelley, Transportation Manager, Phillip Stitt, Night Manager, Rodney Ware, Night Shift Supervisor, and Sineca Kennsey, Day Shift Supervisor, were long term employees. Additionally, while turnover among hourly employees in the food distribution business is high and was high in the Clanton facility, there was a strong core of hourly employees in the warehouse and a good core of drivers. Also, Stitt, as Night Shift Manager, always received a good bonus. Additionally, the facility consistently performed well on AIB (American Institute of Baking) Audits, which are bi-annual food safety audits conducted by professionally trained auditors to ensure compliance with food safety regulations and to ensure that Merchants Foodservice provides safe, high quality food products to consumers.

3. I moved Randy Harrington, Inventory Control Supervisor, into the job of Operations Manager and intended for him to remain in the job. However, I was told by Andy Mercier and Don Suber to arrange an interview with Steve Adams for the job as Operations Manager, so I did.

4. On the day of the interview with Mr. Adams, Mr. Mercier and Mr. Suber were delayed, so I interviewed Mr. Adams. Mr. Adams was concerned about how many hours he would have to work, and I told him he could generally work the schedule he wanted but that he needed to get the work done before he left. I never told Mr. Adams that he would only have to work 8-8.5 hours a day.

The Operations Managers typically had to work two Saturdays a year for inventory, so I told Mr. Adams that he could expect to work two Saturdays a year for inventory. However, the expectation was that Mr. Adams would also work Saturdays when there were other business functions or when business needs required that he work. Further, Mr. Adams was directly responsible for the condition of the warehouse for the AIB audits and would have been responsible for additional work to prepare for the bi-annual audits.

5. Mr. Adams was also concerned about the number of nights he would have to work. As Operations Manager, Mr. Adams would ultimately be responsible for the night shift, so I explained that he would need to work some nights to learn how the shift operated and to get acquainted with the managers and employees on the night shift. I also told Mr. Adams that by working some nights he could potentially offer some suggestions for improving the night shift. When I interviewed Mr. Adams, I did not expect that he would regularly work nights.

6. Mr. Adams told me that he had accumulated a significant amount of vacation days at Sysco, and he did not want to lose his vacation time. I explained the vacation policy from the handbook to Mr. Adams, but I also told him that after a couple of months I would let him take a Thursday and Friday or a Friday off, so long as work allowed. I never told Mr. Adams that he could have all the time off that he wanted. Further, on a couple of occasions I allowed Mr. Adams to leave

early on Fridays during hunting season to go hunting. Mr. Adams requested two days off as we were preparing for a YUM audit, and because we were preparing for the audit, it is my understanding that Scott Casey turned down his request.

7. Finally, Mr. Adams asked me about the workforce. I believed we had a good workforce, and while there was significant turnover, we had a good core of hourly employees in the warehouse and drivers who were reliable, which I told Mr. Adams. I believed that our Night Manager did well with his bonuses, and I knew that Mr. Brooks had received good bonuses. I told Mr. Adams that he could expect to do the same. Further, the night shift, along with the other shifts, had all the pieces in place but needed the glue to hold them together, which is what I told Mr. Adams. Finally, at the time of the interview, I did not believe the warehouse or equipment was in poor condition, and Mr. Adams did not ask about them.

8. After our interview, Mr. Huber and Mr. Mercier arrived, and we all had the opportunity to interview Mr. Adams together. Eventually, Mr. Adams accepted the job, and returned his offer letter.

9. After Mr. Adams started as Operations Manager, he left earlier than most other managers and did not work the same amount as other managers. Further, Mr. Adams was hesitant to work any nights, even to get to know the employees, and when he worked nights, Mr. Adams often left before the shift

ended. I was concerned about Mr. Adams' dedication and willingness to get the job done as Operations Manager.

10. Still, three events occurred that required additional work that I was not expecting. First, our night shift supervisor was fired about a month after Mr. Adams started. As Operations Manager, it was expected that Mr. Adams would assume some of the responsibility on the night shift, and he had to work more nights. Then, in March 2005, our Night Manager quit. Mr. Adams was asked to work some nights to see if he could help get a handle on improving the situation because he was responsible for the night shift. We hired a new night manager, James Tankersley, and as Operations Manager, Mr. Adams was responsible for training Mr. Tankersley on how the facility operated, which required his working more nights. In fact, I spoke with Mr. Adams about his need to work with Mr. Tankersley on the night shift. For these reasons, Mr. Adams had to work more nights than I expected when he was hired because I did not expect that the night shift supervisor would be fired or that the night shift manager would resign while Mr. Adams was Operations Manager.

11. The problems on the night shift also affected the day shift and caused more work on the day shift. As such, Mr. Adams had to work more hours during the day than expected.

12. Typically, the Clanton facility had to pass bi-annual AIB Audits, which resulted in working two Saturdays a year for inventory. For the first time, in 2005, we had to prepare for a YUM audit for the first time because of our work with KFC, and that required Mr. Adams to work longer hours and more weekends.

13. Finally, Scott Casey, Corporate Director of Operations, became more involved in the operations at the Clanton facility, and in fact, Mr. Adams began reporting to Mr. Casey instead of to me. Mr. Casey required Mr. Adams and all managers to work longer hours than I did. Further, Mr. Casey told Mr. Adams and the other managers that they would be required to work longer hours.

14. These unexpected changes resulted in an increased workload, longer hours, more Saturday work, and fewer vacation opportunities for Mr. Adams.

15. As Operations Manager, Mr. Adams had the authority to discipline the employees who reported to him, and I told Mr. Adams to discipline and/or discharge managers that were not performing.

16. In July 2005, Mr. Adams voluntarily resigned his employment.

17. I had no plans to hire a new Operations Manager after I moved Mr. Harrington into the job, and I did not conceal anything or misrepresent anything to Mr. Adams in an attempt to convince him to accept a job with Merchants Foodservice. In fact, I told Mr. Adams that there was work to do that would require long hours and dedication. I thought Mr. Adams could get the job done

based on his experience and his confidence in his ability. Unfortunately, Mr. Adams never appeared to accept the additional responsibility and workload that came with the change from a day shift supervisor to an Operations Manager.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of June, 2007.



Hal Henson

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STEVE ADAMS,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
	)	2:06-cv-00707-ID-CSC
)	
MERCHANTS FOODSERVICE, et al.,)	
)	
Defendants.)	

REVISED DECLARATION OF ANDY MERCIER

My name is Andy Mercier. I have been President and Chief Executive Officer for Merchants Foodservice since October 2006. I am aware of the lawsuit filed by Steve Adams, and this Declaration is based on my personal knowledge.

1. Merchants Foodservice operates state-of-the-art distribution and warehousing centers in Clanton, Alabama and Jackson, Mississippi.

2. Merchants Foodservice is a 103 year old company headquartered in Hattiesburg, Mississippi.

3. I consider Merchants Foodservice to be family oriented. The company is a family owned business, and I am proud that Merchants Foodservice is family oriented. I told Mr. Adams during his interview that Merchants Foodservice was family oriented.

4. Each distribution and warehousing center has a General Manager, who is responsible for the entire center, an Operations Manager, who is responsible for the day and night shifts in the warehouse and transportation, an Inventory Control Manager, who is responsible for inventory on the day shift, a Transportation Manager, who is responsible for transportation, and a Night Manager, who is responsible for the night shift in the warehouse.

5. Merchants Foodservice opened a new facility in Clanton in July of 2000.

6. At the time of his discharge as Operations Manager in the Clanton facility on March 29, 2004, Todd Brooks was being paid \$54,600 a year, and in 2003, he received a bonus of approximately 22% of his salary.

7. The new operations manager hired in August 2004 would inherit a stable management staff because, Randy Harrington, Inventory Control Supervisor, had worked for the company since December 12, 2001, Jason Kelley, Transportation Manager, had been with the company since November 16, 2000, and Phillip Stitt, Night Manager, had worked for the company since February 9, 1997. Rodney Ware had been night shift supervisor since April 23, 2000 and Sineca Kennsey was a day shift supervisor and had worked for the company since November 16, 2001.

8. Additionally, turnover among hourly employees in the food distribution business is high, and the Clanton facility was no exception to the industry norm. Further, there was a strong core of hourly employees in the warehouse and a good core of drivers in the Clanton facility. Stitt, as Night Shift Manager, received a bonus of approximately 20% of his salary in 2003 and was on pace to receive a bonus of 13-15% of his salary in 2004.

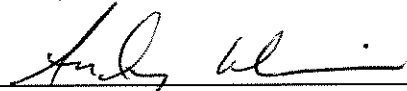
9. Moreover, sales in the Clanton facility rose from \$53,518,040 in 2002 to \$60,586,751 in 2003 and were continuing to rise in 2004.

10. The facility consistently performed well on AIB (American Institute of Baking) Audits, which are bi-annual food safety audits conducted by professionally trained auditors to ensure compliance with food safety regulations and to ensure that Merchants Foodservice provides safe, high quality food products to consumers. The Clanton facility received a Superior rating on its May 22, 2002 audit, a Superior rating on its October 11, 2002 audit, an Excellent rating on its May 22, 2003 audit, a Superior rating on its January 16, 2004 audit, and a Superior rating on its August 31, 2004 audit. (The AIB Audits are attached as Exhibits 1-5).

11. As Operations Manager, Mr. Adams had the authority to discipline the employees who reported to him, and I told him to discipline and/or discharge managers that were not performing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of September, 2007.



Andy Mercier